

# Exhibit A

1  
2 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 ATHENA ART FINANCE CORP.,

5 Plaintiff,

Case No.

6 -against-

20-cv-4669 (GBD)

7 that CERTAIN ARTWORK BY JEAN-MICHEL BASQUIAT  
8 ENTITLED HUMIDITY, 1982, In Rem,

9 Defendants.

10 SATFINANCE INVESTMENT LIMITED and DELAHUNTY  
LIMITED d/b/a DELAHUNTY FINE ART,

11 Interested Parties.

-----X

12 SATFINANCE INVESTMENT LIMITED,

13 Intervenor-Plaintiff,

-against-

14 ATHENA ART FINANCE CORP. and that CERTAIN  
ARTWORK BY JEAN-MICHEL BASQUIAT ENTITLED  
15 HUMIDITY, 1982, In Rem,

16 Intervenor-Defendants.

-----X

17 April 4, 2023

9:22 a.m.

18 \*\*\*CONFIDENTIAL - UNDER PROTECTIVE ORDER\*\*\*

19  
20 VIDEOTAPED DEPOSITION of MICHAEL  
21 PLUMMER, taken pursuant to Notice, held at the  
22 offices of Goodwin Procter, LLP, 620 8th  
23 Avenue, New York, New York, before Fran Insley,  
24 a Notary Public of the States of New York and  
25 New Jersey.

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 <b>A P P E A R A N C E S:</b></p> <p>3     <b>GOODWIN PROCTER, LLP</b></p> <p>4         Attorneys for Plaintiff</p> <p>5         620 Eighth Avenue</p> <p>6         New York, New York 10018</p> <p>7     <b>BY: JONATHAN SHAPIRO, ESQ.</b></p> <p>8         <b>CHRISTINE SAMA, ESQ.</b></p> <p>9         <b>OWEN MARKS, ESQ.</b></p> <p>10         jshapiro@goodwinlaw.com</p> <p>11</p> <p>12     <b>GROSSMAN LLP</b></p> <p>13         Attorneys for Interested Party</p> <p>14         Satfinance Investment Limited</p> <p>15         745 Fifth Avenue, 5th floor</p> <p>16         New York, New York 10151</p> <p>17     <b>BY: JUDD B. GROSSMAN, ESQ.</b></p> <p>18         jgrossman@grossmanllp.com</p> <p>19         -and-</p> <p>20         <b>WEBSTER McBRIDE, ESQ.</b></p> <p>21         wmcbride@grossmanllp.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 ----- <b>I N D E X</b> -----</p> <p>3 <b>WITNESS           EXAMINATION BY       PAGE</b></p> <p>4 <b>MICHAEL PLUMMER   MR. SHAPIRO       8</b></p> <p>5                   <b>MS. HALL           405</b></p> <p>6</p> <p>7 ----- <b>E X H I B I T S</b> -----</p> <p>8 <b>PLUMMER       DESCRIPTION           PAGE</b></p> <p>9 Exhibit 1 Loan and Security agreement   68</p> <p>10 Exhibit 2 Purchase agreement           72</p> <p>11 Exhibit 3 Expert report                 106</p> <p>12 Exhibit 4 Interview in Artnet           146</p> <p>13 Exhibit 5 Partnership agreement       284</p> <p>14 Exhibit 6 Overton report               346</p> <p>15 Exhibit 7 Affidavit                   387</p> <p>16 Exhibit 8 Security agreement with       403</p> <p>17           attachments</p> <p>18 Exhibit 9 Invoice                       408</p> <p>19 Exhibit 10 Rebuttal report             411</p> <p>20</p> <p>21           <b>(EXHIBITS PRODUCED.)</b></p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 <b>A P P E A R A N C E S : (Continued)</b></p> <p>3     <b>CLARICK GUERON REISBAUM, LLP</b></p> <p>4         Attorneys for Interested Party</p> <p>5         Delahunty Limited d/b/a Delahunty</p> <p>6         Fine Art</p> <p>7         220 Fifth Avenue, 14th floor</p> <p>8         New York, New York 10001</p> <p>9         (212) 633-4310</p> <p>10     <b>BY: ASHLEY HALL, ESQ.</b></p> <p>11         ahall@cgr-law.com</p> <p>12</p> <p>13 <b>ALSO PRESENT:</b></p> <p>14     <b>ANDREA ORTEGA, Videographer</b></p> <p>15     <b>REBECCA FINE, ESQ.</b></p> <p>16         xxxx</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2           <b>S T I P U L A T I O N S</b></p> <p>3     <b>IT IS HEREBY STIPULATED AND AGREED by</b></p> <p>4     and between the attorneys for the respective</p> <p>5     parties herein, that filing, sealing and</p> <p>6     certification, and the same are, hereby waived.</p> <p>7</p> <p>8     <b>IT IS FURTHER STIPULATED AND AGREED</b></p> <p>9     that all objections except as to the form of</p> <p>10    the question, shall be reserved to the time of</p> <p>11    the trial.</p> <p>12</p> <p>13    <b>IT IS FURTHER STIPULATED AND AGREED</b></p> <p>14    that the within deposition may be signed and</p> <p>15    sworn to by an officer authorized to administer</p> <p>16    an oath, with the same force and effect as if</p> <p>17    signed and sworn to before the Court.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 14</p> <p>1 Plummer - Confidential</p> <p>2 Q. Whereas secured lending could be</p> <p>3 asset-backed lending that is secured by</p> <p>4 multiple assets?</p> <p>5 A. By multiple assets or an entire</p> <p>6 business.</p> <p>7 Q. Fair enough. That would be a</p> <p>8 blanket lien, correct?</p> <p>9 A. Correct, correct.</p> <p>10 Q. Other than that, do you draw any</p> <p>11 distinction in your mind between asset-backed</p> <p>12 lending and secured lending?</p> <p>13 A. I don't.</p> <p>14 Q. If I were to ask the question, do</p> <p>15 you draw any distinctions between assets plural</p> <p>16 backed lending and secured lending your answer</p> <p>17 is the same; it's the same in your mind?</p> <p>18 A. Correct.</p> <p>19 Q. What is alternative lending?</p> <p>20 A. I'm not sure what you mean.</p> <p>21 Q. Are you familiar with the term</p> <p>22 alternative lending classes?</p> <p>23 A. I am not sure I am in the context</p> <p>24 you are using it.</p> <p>25 Q. Sitting here today, you're not</p>	<p style="text-align: right;">Page 16</p> <p>1 Plummer - Confidential</p> <p>2 nonstandard form of lending or investing as</p> <p>3 then it's considered historically a standard</p> <p>4 form which would be in real estate or something</p> <p>5 like that.</p> <p>6 Q. So in your mind real estate is a</p> <p>7 standard form of investing?</p> <p>8 A. Correct.</p> <p>9 Q. That includes a publicly traded</p> <p>10 REIT, sir?</p> <p>11 A. Yes.</p> <p>12 Q. Would it also include a second home?</p> <p>13 A. I don't know.</p> <p>14 Q. Would it include an investment in</p> <p>15 real estate that is not publicly traded?</p> <p>16 A. I don't know.</p> <p>17 Q. Is investing in a private placement</p> <p>18 of securities a standard investing in your mind</p> <p>19 or nonstandard?</p> <p>20 A. I don't know. This is not my area</p> <p>21 of specialty.</p> <p>22 Q. Fair enough. Do you consider</p> <p>23 yourself an expert in asset-backed lending?</p> <p>24 A. I consider myself an expert in art</p> <p>25 asset-backed lending.</p>
<p style="text-align: right;">Page 15</p> <p>1 Plummer - Confidential</p> <p>2 claiming to be any expert in alternative asset</p> <p>3 class lending?</p> <p>4 A. No. I am an expert in alternative</p> <p>5 investments in art.</p> <p>6 Q. Okay. Well, what is an alternative</p> <p>7 investment in art?</p> <p>8 A. It's when art is used as an</p> <p>9 investment as an alternative -- it's used --</p> <p>10 it's called alternative investing and art is an</p> <p>11 investment that is nonstandard as an investment</p> <p>12 category.</p> <p>13 Q. Are you referring to an investment</p> <p>14 in debt or an investment in equity?</p> <p>15 A. I'm referring to an investment in</p> <p>16 debt, but -- in equity, but I'm sure that you</p> <p>17 could refer to debt as well.</p> <p>18 Q. I just need to understand what you</p> <p>19 mean by your use of the term alternative</p> <p>20 lending in art, that's all. So one more time.</p> <p>21 What is alternative lending in art?</p> <p>22 MR. MC BRIDE: Objection. You can</p> <p>23 answer.</p> <p>24 A. I think it's -- I believe it's the</p> <p>25 same way it is used in investing that art is a</p>	<p style="text-align: right;">Page 17</p> <p>1 Plummer - Confidential</p> <p>2 Q. So you're not holding yourself out</p> <p>3 as an expert in any kind of asset-backed</p> <p>4 lending, other than asset-backed lending that</p> <p>5 is backed by art?</p> <p>6 A. Correct.</p> <p>7 Q. Do you consider yourself an expert</p> <p>8 in secured lending?</p> <p>9 A. In a general sense, no. When it</p> <p>10 pertains to art, yes.</p> <p>11 Q. Why do you consider yourself --</p> <p>12 withdrawn.</p> <p>13 Why do you consider yourself to be</p> <p>14 an expert in asset-backed lending with the</p> <p>15 narrow focus of art?</p> <p>16 A. Because that's been my professional</p> <p>17 focus off and on for the last 40 years almost.</p> <p>18 I started doing that -- working in that</p> <p>19 category at Sotheby's in the treasury</p> <p>20 department in 1980.</p> <p>21 Q. Back in 1980, you were</p> <p>22 professionally employed in the field of</p> <p>23 asset-backed lending with assets backed only by</p> <p>24 art?</p> <p>25 A. That was one part of my job in the</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 26</p> <p>1 Plummer - Confidential</p> <p>2 Christie's for an asset-backed lending</p> <p>3 business?</p> <p>4 A. 2007.</p> <p>5 Q. And that's the year in your mind, as</p> <p>6 near as you can figure, that you would feel</p> <p>7 comfortable saying you were an expert in</p> <p>8 asset-backed lending?</p> <p>9 A. I don't know if I would pick out a</p> <p>10 particular years when I became an expert. I</p> <p>11 think I just have developed the cumulative</p> <p>12 experience over the years and that position,</p> <p>13 the first position and other experiences</p> <p>14 working with dealers in different categories</p> <p>15 and roles that I, at least by now, am an</p> <p>16 expert.</p> <p>17 Q. So did there -- how about this?</p> <p>18 What is the earliest date that sitting here</p> <p>19 today you are comfortable saying you considered</p> <p>20 yourself an expert in asset-backed lending?</p> <p>21 MR. MC BRIDE: Objection.</p> <p>22 A. I can't answer that question. I</p> <p>23 don't know.</p> <p>24 Q. Sometime between 2007 and today?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 Plummer - Confidential</p> <p>2 Q. How about generally have you ever</p> <p>3 taken a course in underwriting?</p> <p>4 A. I don't remember.</p> <p>5 Q. Are there accredited colleges and</p> <p>6 universities that offer classes in secured</p> <p>7 lending?</p> <p>8 A. I'm sure there are.</p> <p>9 Q. Can you name one?</p> <p>10 A. No.</p> <p>11 Q. Are there accredited colleges and</p> <p>12 universities that offer classes in credit risk</p> <p>13 assessment and management?</p> <p>14 A. I'm sure there are.</p> <p>15 Q. Can you name any?</p> <p>16 A. No.</p> <p>17 Q. Same question, sir, are there</p> <p>18 accredited colleges and universities that offer</p> <p>19 classes in underwriting?</p> <p>20 MR. MC BRIDE: Objection. Go ahead.</p> <p>21 A. I'm sure there are.</p> <p>22 Q. Can you name any?</p> <p>23 A. No.</p> <p>24 Q. Mr. Plummer, do you hold any</p> <p>25 professional licenses?</p>
<p style="text-align: right;">Page 27</p> <p>1 Plummer - Confidential</p> <p>2 Q. Have you ever taken a course in</p> <p>3 secured lending?</p> <p>4 A. In college at Wharton. It was</p> <p>5 included in part of the course.</p> <p>6 Q. So you took a course that included</p> <p>7 many things, one of which was secured lending?</p> <p>8 A. Yes.</p> <p>9 Q. What do you remember from that</p> <p>10 course?</p> <p>11 MR. MC BRIDE: Objection.</p> <p>12 A. It was so long ago, I don't</p> <p>13 remember.</p> <p>14 Q. Have you ever taken another course</p> <p>15 in secured lending?</p> <p>16 A. No.</p> <p>17 Q. Have you ever taken a course in</p> <p>18 credit risk?</p> <p>19 A. I don't remember.</p> <p>20 Q. Have you ever taken a course in</p> <p>21 underwriting?</p> <p>22 A. Not specifically.</p> <p>23 Q. You know what I mean by</p> <p>24 underwriting?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 Plummer - Confidential</p> <p>2 A. I hold actually a real estate</p> <p>3 license.</p> <p>4 Q. Is that to buy and sell real estate</p> <p>5 in the State of New York?</p> <p>6 A. Yes.</p> <p>7 Q. Do you hold any professional</p> <p>8 licenses other than your real estate license?</p> <p>9 A. No.</p> <p>10 Q. When did you obtain your real estate</p> <p>11 license?</p> <p>12 A. In 1988 when I was working for the</p> <p>13 real estate company for Sotheby's.</p> <p>14 Q. And that real estate company at</p> <p>15 Sotheby's had nothing to do with asset-backed</p> <p>16 lending, true?</p> <p>17 A. Correct.</p> <p>18 Q. Have you held your real estate</p> <p>19 license continuously since that time?</p> <p>20 A. Actually no, I have not. I let it</p> <p>21 lapse for a while and then reinstated it.</p> <p>22 Q. Why did you reinstate it?</p> <p>23 A. Because we had a client who -- with</p> <p>24 art, an art collection who also had a real</p> <p>25 estate, a piece of real estate to sell.</p>

<p style="text-align: right;">Page 30</p> <p>1 Plummer - Confidential</p> <p>2 Q. Full service firm, sir?</p> <p>3 A. In that context.</p> <p>4 Q. Do you hold any professional</p> <p>5 licenses or credentials that have anything to</p> <p>6 do with asset-backed lending?</p> <p>7 A. No.</p> <p>8 Q. Do you have any professional</p> <p>9 licenses or credentials that are in any form or</p> <p>10 fashion relevant to underwriting or to credit</p> <p>11 risk?</p> <p>12 A. No.</p> <p>13 Q. Do you hold any professional</p> <p>14 licenses or credentials that are relevant to</p> <p>15 the offering of a debt securities?</p> <p>16 A. No.</p> <p>17 Q. Have you ever held a lender's</p> <p>18 license?</p> <p>19 A. No.</p> <p>20 Q. Have you ever held a broker's</p> <p>21 license other than with respect to real estate?</p> <p>22 A. No.</p> <p>23 Q. Have you ever held a license to sell</p> <p>24 debt collateral backed securities?</p> <p>25 A. I have not.</p>	<p style="text-align: right;">Page 32</p> <p>1 Plummer - Confidential</p> <p>2 that was -- that was sort of part of the job</p> <p>3 when I was in the treasury department at</p> <p>4 Sotheby's was underwriting, was reviewing the</p> <p>5 credit risk involved with dealers to extend to</p> <p>6 them trade terms, credit trade terms. So that</p> <p>7 was a form of underwriting, yeah.</p> <p>8 Q. This was a job that ended in 1984,</p> <p>9 sir?</p> <p>10 A. Yes.</p> <p>11 Q. Did you actually sign as an</p> <p>12 underwriter off on the extension of credit to</p> <p>13 anyone at Sotheby's in the '80s?</p> <p>14 A. Yes, that was part of the job.</p> <p>15 Q. What was the limit of your</p> <p>16 underwriting authority?</p> <p>17 A. Oh, I couldn't remember. It was a</p> <p>18 hundred thousand, a couple hundred thousand.</p> <p>19 Q. Did you need to get --</p> <p>20 A. But that was in 1984 and today's</p> <p>21 dollars that would be probably be close to a</p> <p>22 million or so.</p> <p>23 Q. Have you ever been a lead</p> <p>24 underwriter anywhere?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 31</p> <p>1 Plummer - Confidential</p> <p>2 Q. Are you a CPA?</p> <p>3 A. I am not.</p> <p>4 Q. Are you a CFA?</p> <p>5 A. I am not.</p> <p>6 Q. Are you aware that CPAs and CFAs</p> <p>7 have professional training in the area broadly</p> <p>8 of collateral backed securities?</p> <p>9 A. Yes, I do. That was part of my</p> <p>10 Wharton education. A lot of my classmates went</p> <p>11 on to get CFAs and CPAs. I did not.</p> <p>12 Q. You did not. Have you ever worked</p> <p>13 as an underwriter?</p> <p>14 A. I was in -- head of the underwriting</p> <p>15 at Christie's. That was my responsibility to</p> <p>16 oversee that area. So I did not do</p> <p>17 specifically the underwriting myself, but that</p> <p>18 was my job description.</p> <p>19 Q. So, you, because you were the CFO of</p> <p>20 the organization, you had lots of different</p> <p>21 disciplines underneath you?</p> <p>22 A. Several, yeah.</p> <p>23 Q. But you've never worked as an</p> <p>24 underwriter yourself?</p> <p>25 A. Well, actually I would say in the --</p>	<p style="text-align: right;">Page 33</p> <p>1 Plummer - Confidential</p> <p>2 Q. What is the usual career progression</p> <p>3 for an underwriter of asset-backed loans?</p> <p>4 A. I don't know. I might -- my</p> <p>5 experience is in the art world. So I can't</p> <p>6 speak to general asset-backed lending. I can</p> <p>7 only speak to and only consider myself an</p> <p>8 expert on art asset-backed loans.</p> <p>9 Q. Do you think you're qualified to be</p> <p>10 an underwriter for anything other than an</p> <p>11 asset-backed loan?</p> <p>12 A. Other than an asset-backed loan?</p> <p>13 Q. Pardon me. Do you think you're</p> <p>14 qualified to serve as an underwriter for any</p> <p>15 asset-backed loan, other than one backed by</p> <p>16 art?</p> <p>17 A. I have no interest in that area. So</p> <p>18 I wouldn't even look for a position or job</p> <p>19 doing that. So I have never thought whether</p> <p>20 I'm qualified or not.</p> <p>21 Q. You're not claiming to be an expert?</p> <p>22 A. I'm not claiming to be an expert. I</p> <p>23 think that the art world is too unique and</p> <p>24 specific and idiosyncratic. That's the only</p> <p>25 one I'm interested in.</p>

<p style="text-align: right;">Page 34</p> <p>1 Plummer - Confidential</p> <p>2 Q. Well, is there anything unique and</p> <p>3 idiosyncratic about the perfection of a</p> <p>4 security interest in art as opposed to the</p> <p>5 perfection of a security interest in any other</p> <p>6 chattel?</p> <p>7 A. I think it's -- yeah. I think the</p> <p>8 art world because of its opaque nature and its</p> <p>9 longstanding traditions of doing business and</p> <p>10 how difficult it is to get information and how</p> <p>11 it operates, I think it is different.</p> <p>12 Q. Do you remember my question, sir? I</p> <p>13 can ask it again. It's my job.</p> <p>14 A. Please do.</p> <p>15 Q. When it comes to the perfection of a</p> <p>16 security interest under the UCC as you</p> <p>17 previously testified, is it any different for a</p> <p>18 security interest in art than it is in a</p> <p>19 security interest in any other chattel?</p> <p>20 A. I don't know because I'm not an</p> <p>21 expert on other chattels.</p> <p>22 Q. So sitting here today, you don't</p> <p>23 know if the rules of the road as it were for</p> <p>24 the perfection of a security interest in art</p> <p>25 are in any fashion different than they are for</p>	<p style="text-align: right;">Page 36</p> <p>1 Plummer - Confidential</p> <p>2 Q. Have you ever served on a risk</p> <p>3 committee?</p> <p>4 A. Not that I can recall.</p> <p>5 Q. Have you ever worked for a</p> <p>6 registrant?</p> <p>7 A. No.</p> <p>8 Q. Have you ever worked for a federal</p> <p>9 or state chartered financial institution?</p> <p>10 A. Nope.</p> <p>11 Q. Are there federal regulations and</p> <p>12 guidelines that are applicable to asset-backed</p> <p>13 lending in the United States?</p> <p>14 A. For outside of the art world, I'm</p> <p>15 not familiar with them.</p> <p>16 Q. Sir, are you aware of any exception</p> <p>17 to financial regulation in America for art?</p> <p>18 A. No.</p> <p>19 Q. Are you -- withdrawn.</p> <p>20 Can you identify the government</p> <p>21 agencies that are involved in the regulation of</p> <p>22 asset-backed and other lending in America?</p> <p>23 A. No.</p> <p>24 MR. MC BRIDE: Objection.</p> <p>25 Q. No idea?</p>
<p style="text-align: right;">Page 35</p> <p>1 Plummer - Confidential</p> <p>2 the perfection of a security interest in</p> <p>3 another chattel?</p> <p>4 A. No.</p> <p>5 Q. Have you ever worked as a risk</p> <p>6 officer?</p> <p>7 A. No.</p> <p>8 Q. Do you consider yourself qualified</p> <p>9 to be a risk officer?</p> <p>10 A. In art, yes.</p> <p>11 Q. How about a credit risk officer?</p> <p>12 A. In art, yes.</p> <p>13 Q. Are there regulators' requirements</p> <p>14 to be a credit risk officer?</p> <p>15 A. In the art world I'm not aware of</p> <p>16 them.</p> <p>17 Q. Have you ever served on a credit</p> <p>18 committee?</p> <p>19 A. Yes.</p> <p>20 Q. When?</p> <p>21 A. 2007, 2008 at Christie's.</p> <p>22 Q. Other than 2007 and 2008 at</p> <p>23 Christie's, have you ever served on a credit</p> <p>24 committee?</p> <p>25 A. Not that I can recall.</p>	<p style="text-align: right;">Page 37</p> <p>1 Plummer - Confidential</p> <p>2 A. It's not an area that I focused on.</p> <p>3 Q. How about the treasury department?</p> <p>4 MR. MC BRIDE: Objection.</p> <p>5 A. Again, not an area I focus on.</p> <p>6 Q. How about the OCC?</p> <p>7 A. I'm aware of them. And I have seen</p> <p>8 some of their writings and seen some mention of</p> <p>9 it in the accounts report, but I think some of</p> <p>10 them are contrary to how the art market</p> <p>11 operates and I think that some of them are</p> <p>12 not -- some of their guidelines are not</p> <p>13 relevant.</p> <p>14 Q. So, in your view, the regulation and</p> <p>15 guidance from the federal OCC doesn't apply to</p> <p>16 the art world?</p> <p>17 MR. MC BRIDE: Objection.</p> <p>18 A. I didn't say the regulations. I</p> <p>19 said the guidance. There is specific guidance</p> <p>20 that I don't think is relevant.</p> <p>21 Q. Do art lenders ever need licenses</p> <p>22 from regulators?</p> <p>23 A. I'm not certain about that.</p> <p>24 Q. Well, sir, if you're an expert in</p> <p>25 asset-backed lending collateralized by art, how</p>

10 (Pages 34 - 37)



<p style="text-align: right;">Page 38</p> <p>1 Plummer - Confidential</p> <p>2 is it that you don't know if there is any</p> <p>3 licensure requirements to engage in that</p> <p>4 practice?</p> <p>5 MR. MC BRIDE: Objection.</p> <p>6 A. I haven't focused on that.</p> <p>7 Q. How about the FDIC? Does the FDIC</p> <p>8 have any regulations or guidance that are</p> <p>9 applicable to asset-backed lending?</p> <p>10 A. I don't know.</p> <p>11 Q. How about the Federal Reserve?</p> <p>12 MR. MC BRIDE: Objection.</p> <p>13 A. I don't know.</p> <p>14 Q. Have you ever had a client in</p> <p>15 California?</p> <p>16 A. Yes.</p> <p>17 Q. Need a license to be a dealer in art</p> <p>18 in California? I'm asking you.</p> <p>19 A. I wasn't acting as a dealer in</p> <p>20 California.</p> <p>21 Q. Were you -- in what capacity were</p> <p>22 you acting on behalf of a client in California?</p> <p>23 A. I was brokering a loan for them.</p> <p>24 Q. As a loan broker in California, is</p> <p>25 it subject to any licensure requirement?</p>	<p style="text-align: right;">Page 40</p> <p>1 Plummer - Confidential</p> <p>2 laws in California are different and I know</p> <p>3 that it is much more regulated here in New</p> <p>4 York, but this was twelve years ago and I don't</p> <p>5 remember many specifics about the case.</p> <p>6 Q. So you just referred to working with</p> <p>7 I suppose a counterparty who had a license in</p> <p>8 California?</p> <p>9 A. Yes.</p> <p>10 Q. Is it your testimony as an expert --</p> <p>11 withdrawn.</p> <p>12 Is it your testimony as a claimed</p> <p>13 expert in asset-backed lending in art that to</p> <p>14 engage in asset-backed lending collateralized</p> <p>15 by art you need a license in California?</p> <p>16 MR. MC BRIDE: Objection.</p> <p>17 A. I don't remember the specifics. I</p> <p>18 know that we had to make various provisions to</p> <p>19 make sure that we were fitting within the</p> <p>20 regulations of California law with regard to</p> <p>21 lending.</p> <p>22 Q. Who is the antecedent of we?</p> <p>23 A. What do you mean?</p> <p>24 Q. You just testified that we had to</p> <p>25 make sure we were complying with the law in</p>
<p style="text-align: right;">Page 39</p> <p>1 Plummer - Confidential</p> <p>2 A. Maybe in California, but in New York</p> <p>3 I wasn't aware that I had to be licensed.</p> <p>4 Q. So in your view, as long as you are</p> <p>5 sitting in New York, you can broker a loan for</p> <p>6 a Californian?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. It was a while ago. I don't</p> <p>9 remember the specifics.</p> <p>10 Q. Are you licensed to be a lender in</p> <p>11 California?</p> <p>12 A. No, I am not and I wasn't acting as</p> <p>13 a lender.</p> <p>14 Q. Do you know what it even means to be</p> <p>15 acting as a lender in California?</p> <p>16 MR. MC BRIDE: Objection.</p> <p>17 A. I don't know how you mean that</p> <p>18 question.</p> <p>19 Q. In your mind, is brokering a loan in</p> <p>20 California not acting as a lender in</p> <p>21 California?</p> <p>22 A. I was consulting with a client as a</p> <p>23 go between between a lender who did have the</p> <p>24 proper licenses to lend in California and they</p> <p>25 provided the lending. I know that the lending</p>	<p style="text-align: right;">Page 41</p> <p>1 Plummer - Confidential</p> <p>2 California or something to that effect?</p> <p>3 A. My company, Artvest Partners.</p> <p>4 Q. Were you personally responsible for</p> <p>5 ensuring compliance with the lending laws of</p> <p>6 California?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. With the party that we were working</p> <p>9 with who was extending the credit together we</p> <p>10 were.</p> <p>11 Q. Name of that party?</p> <p>12 MR. MC BRIDE: Objection.</p> <p>13 A. Do I have to --</p> <p>14 MR. SHAPIRO: The witness testified</p> <p>15 that they had a license. I would like to</p> <p>16 know who they are and why he thinks --</p> <p>17 A. I didn't testify that they had a</p> <p>18 license. I testified that they went -- they</p> <p>19 went through various measures to make sure that</p> <p>20 they were compliant with the law. I don't</p> <p>21 remember whether they have a license or not.</p> <p>22 Q. Do you even know if you need a</p> <p>23 license to make an asset-backed loan secured by</p> <p>24 art in California?</p> <p>25 A. Yes, I do because we looked at that</p>



<p style="text-align: right;">Page 58</p> <p>1 Plummer - Confidential</p> <p>2 that's where you first learned about it,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. And then you told me that you were</p> <p>6 the CFO of a lending business, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Have the standards for stress</p> <p>9 testing changed over the course of what was by</p> <p>10 my math 30 odd years?</p> <p>11 A. Yeah, they have.</p> <p>12 Q. In what way have they changed?</p> <p>13 A. I think since the debt crisis they</p> <p>14 have become more sophisticated and more robust.</p> <p>15 Q. What debt crisis?</p> <p>16 A. The 2007/2008 crisis.</p> <p>17 Q. In what fashion have they become</p> <p>18 more sophisticated and robust in your</p> <p>19 expertise?</p> <p>20 A. I think that there is an awareness</p> <p>21 of the fragility of liquidity in the art world</p> <p>22 that it has caused the auction houses and</p> <p>23 others to be aware that periods of time can</p> <p>24 elapse that things can be very difficult to</p> <p>25 sell. So I think that there is an eye towards</p>	<p style="text-align: right;">Page 60</p> <p>1 Plummer - Confidential</p> <p>2 MR. MC BRIDE: Objection.</p> <p>3 A. Sorry, ask the question again.</p> <p>4 Q. Sure. So we have two things going</p> <p>5 on, one I'm going to speak faster and faster if</p> <p>6 you keep interrupting me because I'm trying to</p> <p>7 get it out and we will have a terrible record.</p> <p>8 You have to let me finish and I'll</p> <p>9 do my best to not interrupt you and we will all</p> <p>10 get along, okay?</p> <p>11 A. Hmm-hmm.</p> <p>12 Q. If I heard your answer correctly,</p> <p>13 the business that you were responsible for as</p> <p>14 CFO at Christie's was different than Athena</p> <p>15 because at Christie's the risk management took</p> <p>16 into account that Christie's makes more money</p> <p>17 in the event of a default?</p> <p>18 MR. MC BRIDE: Objection.</p> <p>19 A. I would say that the level of risk</p> <p>20 for Christie's and Sotheby's is different than</p> <p>21 Athena and so, therefore, stress testing had --</p> <p>22 was of a different urgency or priority.</p> <p>23 Q. It's fundamentally different; fair</p> <p>24 enough?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 59</p> <p>1 Plummer - Confidential</p> <p>2 the mix of property and the fragility of the</p> <p>3 valuations and I think they are reviewed more</p> <p>4 frequently with that in mind.</p> <p>5 Q. Let's talk about default rates. Are</p> <p>6 you familiar with the default rate?</p> <p>7 A. Yeah.</p> <p>8 Q. True or false, appropriate credit</p> <p>9 underwriting is designed to manage default</p> <p>10 rates within an acceptable risk envelope?</p> <p>11 A. Yes.</p> <p>12 Q. The basic, right?</p> <p>13 A. Well, yes. However, I would say</p> <p>14 auction houses are different from some place</p> <p>15 like Athena because an auction house actually</p> <p>16 makes more money off of a loan when they have a</p> <p>17 default than when they don't. So the issue of</p> <p>18 default is in a different category than it is</p> <p>19 in a place like Athena.</p> <p>20 Q. Okay, fair enough. That is a sharp</p> <p>21 contrast between say the business of Christie's</p> <p>22 where you were the CFO for that business unit--</p> <p>23 A. Right.</p> <p>24 Q. You have to let me finish. And</p> <p>25 Athena?</p>	<p style="text-align: right;">Page 61</p> <p>1 Plummer - Confidential</p> <p>2 Q. What are the risk mitigants that are</p> <p>3 taken into account in underwriting an</p> <p>4 asset-backed loan?</p> <p>5 A. An art asset-backed loan?</p> <p>6 Q. Fair enough. Let me try it again.</p> <p>7 What are the risk mitigants that are</p> <p>8 appropriately taken into account when</p> <p>9 underwriting an asset-backed loan with art as</p> <p>10 the collateral?</p> <p>11 A. Well, I think the mitigants are the</p> <p>12 salability of the art and how fast it can be</p> <p>13 sold. I think one of the problems is that art</p> <p>14 is not an income producing asset and one of the</p> <p>15 issues that I took with the Katz rebuttal is</p> <p>16 that he said that the OCC recommendation was</p> <p>17 that or theory was that all asset-backed loans</p> <p>18 which he applied to loan are given on the</p> <p>19 premise that the underlying asset is going to</p> <p>20 be sold and a lot of people who -- businesses</p> <p>21 who lend against art assets are not intending</p> <p>22 for that art asset to be sold because it can</p> <p>23 take a lot of time for the art to be sold and</p> <p>24 in that period of time the art is not earning</p> <p>25 money, but actually costing money because of</p>

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<p style="text-align: right;">Page 62</p> <p>1 Plummer - Confidential</p> <p>2 insurance and because it is making no income.</p> <p>3 Q. So going back to my question, sir,</p> <p>4 what are the other risk mitigants that are</p> <p>5 properly considered when underwriting an</p> <p>6 asset-backed loan securitized by art?</p> <p>7 A. Having a guarantor who is on the</p> <p>8 hook to pay the interest and pay for the loan.</p> <p>9 Q. Okay. Next?</p> <p>10 A. I don't have another that quickly</p> <p>11 comes to mind. I can think about it, but I</p> <p>12 can't think of one.</p> <p>13 Q. Sir, you're claiming to be an expert</p> <p>14 in asset-backed lending recognizing the narrow</p> <p>15 category secured by art, right?</p> <p>16 A. Yes.</p> <p>17 Q. Other than the art and the personal</p> <p>18 guarantee, what are the other risk mitigants</p> <p>19 that an underwriter takes into account?</p> <p>20 A. Those are the two primary ones.</p> <p>21 Q. You can't -- sitting here today, you</p> <p>22 can't think of another one?</p> <p>23 A. Not at the moment.</p> <p>24 Q. Okay, moving on. How significant</p> <p>25 are interest rates to underwriting asset-backed</p>	<p style="text-align: right;">Page 64</p> <p>1 Plummer - Confidential</p> <p>2 underwrite the loan that the person who is</p> <p>3 borrowing the money can service that debt for</p> <p>4 the period of time because that's a substantial</p> <p>5 amount of money, so it's an important question</p> <p>6 to take into account when you are underwriting</p> <p>7 a loan.</p> <p>8 Q. Prevailing interest rates as they</p> <p>9 impact the borrower?</p> <p>10 A. Yes.</p> <p>11 Q. Fair to say that a lender has the</p> <p>12 right, within certain statutory limitations, to</p> <p>13 set interest rates, right?</p> <p>14 A. Yes.</p> <p>15 Q. How does the ability to set the</p> <p>16 interest due and owing in a debt instrument</p> <p>17 bear on the underwriting of the instrument?</p> <p>18 A. Well, you tend to increase the</p> <p>19 interest rate based on the risk assessment of</p> <p>20 the loan in the underwriting process. So the</p> <p>21 riskier the loan, the higher the interest rate.</p> <p>22 Q. And that is a 100 percent</p> <p>23 appropriate way to manage portfolio risk, yes,</p> <p>24 sir?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 63</p> <p>1 Plummer - Confidential</p> <p>2 lending secured by art?</p> <p>3 A. Can you clarify that question?</p> <p>4 Q. Sure. In underwriting a loan that</p> <p>5 is secured by art, how significant are interest</p> <p>6 rates?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. They are quite significant</p> <p>9 because -- and a determinant factor in many</p> <p>10 ways because the -- and I talk about this in my</p> <p>11 expert witness report and they affect</p> <p>12 businesses like Athena because the source of</p> <p>13 capital -- let me put it a different way.</p> <p>14 Up until the recent levels of</p> <p>15 inflation and interest rate hikes by the fed,</p> <p>16 private collectors were able to get loans from</p> <p>17 their banks for their art collections in the</p> <p>18 3 percent range.</p> <p>19 When businesses like Athena, who are</p> <p>20 not banks, and also auction houses like</p> <p>21 Sotheby's and Christie's have to charge</p> <p>22 interest rates in the 9, 10 percent or higher</p> <p>23 rate and those are high levels of interest to</p> <p>24 serve on -- to service on an annual basis, so</p> <p>25 you have to take into account when looking to</p>	<p style="text-align: right;">Page 65</p> <p>1 Plummer - Confidential</p> <p>2 Q. We call that risk adjusted pricing?</p> <p>3 A. Yes.</p> <p>4 Q. You're familiar with risk adjusted</p> <p>5 pricing?</p> <p>6 A. Hmm-hmm.</p> <p>7 Q. How do you go about risk adjusted</p> <p>8 pricing as an underwriter for an asset-backed</p> <p>9 loan secured by art?</p> <p>10 A. Well, you start with the cost of the</p> <p>11 capital, your source of capital and then you</p> <p>12 make adjustments to the source of your pricing</p> <p>13 above and beyond the margin you charge based</p> <p>14 on, as I said, the risk of the loan that you</p> <p>15 are giving.</p> <p>16 Q. Are you aware that Athena did</p> <p>17 precisely that?</p> <p>18 A. Yes, I saw their credit memos and</p> <p>19 their discussion on this.</p> <p>20 Q. In that regard you have no quarrel</p> <p>21 whatsoever?</p> <p>22 MR. MC BRIDE: Objection.</p> <p>23 A. No, not with risk adjusted pricing,</p> <p>24 no.</p> <p>25 Q. So that piece of the underwriting</p>

<p style="text-align: right;">Page 66</p> <p>1 Plummer - Confidential</p> <p>2 you're fine with?</p> <p>3 A. Yeah.</p> <p>4 Q. You have no quarrel about -- with</p> <p>5 how Athena goes about reviewing on a periodic</p> <p>6 basis the risk exposure from its current</p> <p>7 portfolio?</p> <p>8 A. To the extent I know and have seen,</p> <p>9 no, but it's not something I have evaluated.</p> <p>10 MR. MC BRIDE: We are at the one</p> <p>11 hour mark. Is this good for a break?</p> <p>12 Q. Do you need a break?</p> <p>13 A. It would be nice to take one soon.</p> <p>14 Q. Sure. Well, none of this is civil</p> <p>15 rights violation, so absolutely. Why don't we</p> <p>16 do that.</p> <p>17 MR. MC BRIDE: Sounds good.</p> <p>18 THE VIDEOGRAPHER: We are going off</p> <p>19 the record. The time is 10:26.</p> <p>20 (Brief recess taken.)</p> <p>21 THE VIDEOGRAPHER: We are going on</p> <p>22 the record. The time is 10:45 a.m.</p> <p>23 BY MR. SHAPIRO:</p> <p>24 Q. Mr. Plummer, this morning you</p> <p>25 testified at some point that in the process of</p>	<p style="text-align: right;">Page 68</p> <p>1 Plummer - Confidential</p> <p>2 you reviewed in preparation for today?</p> <p>3 A. I saw, you know, what -- now that</p> <p>4 you mention it, I did see his name on I think</p> <p>5 the credit memo or something.</p> <p>6 Q. As being the domestic US lawyer?</p> <p>7 A. Yeah, yeah. I do remember that now.</p> <p>8 Q. And regardless, it sounds like we</p> <p>9 are in an all heated agreement that Mr. Brody</p> <p>10 is excellent at what he does?</p> <p>11 A. Yes, he is.</p> <p>12 Q. So I handed you what has been marked</p> <p>13 as Plummer Exhibit 1.</p> <p>14 (Whereupon document was marked</p> <p>15 Exhibit 1 for identification as of this</p> <p>16 date.)</p> <p>17 Q. Do you recognize this as a loan and</p> <p>18 security agreement made March 31, 2017 by and</p> <p>19 among Athena Art Finance Corp. and 18 Boxwood</p> <p>20 Green?</p> <p>21 A. Yes.</p> <p>22 MR. MC BRIDE: Take a minute to</p> <p>23 familiarize yourself with the document.</p> <p>24 You don't have to read all of it, but be</p> <p>25 familiar with it.</p>
<p style="text-align: right;">Page 67</p> <p>1 Plummer - Confidential</p> <p>2 perfecting security interests for asset-backed</p> <p>3 lending that lenders rely among other things on</p> <p>4 lawyers, yes?</p> <p>5 A. Yes.</p> <p>6 Q. That's a fully appropriate thing to</p> <p>7 do in your mind?</p> <p>8 A. Yes.</p> <p>9 Q. In fact, it's necessary, yes?</p> <p>10 A. Yes.</p> <p>11 Q. Are you familiar with Steve Brody?</p> <p>12 A. Very much.</p> <p>13 Q. Who is Steve Brody?</p> <p>14 A. He is a lawyer I have used who is --</p> <p>15 his first form of expertise is in real estate</p> <p>16 law, but he has also done work in the art world</p> <p>17 and he has done work for me.</p> <p>18 Q. Good. You're aware, right, that you</p> <p>19 know he was involved among other lawyers in</p> <p>20 advising Athena with respect to the Philbrick</p> <p>21 and the Boxwood loans?</p> <p>22 A. I'm not sure I was. I know he did</p> <p>23 work for Athena, but I'm not sure that I knew</p> <p>24 he was involved in Philbrick and Boxwood.</p> <p>25 Q. You didn't see that in the paperwork</p>	<p style="text-align: right;">Page 69</p> <p>1 Plummer - Confidential</p> <p>2 A. (Witness reading document).</p> <p>3 Q. After you have reviewed it, just</p> <p>4 tell me whether Plummer Exhibit 1 is the loan</p> <p>5 and security agreement that you reviewed in</p> <p>6 connection with forming your opinions in this</p> <p>7 matter?</p> <p>8 A. Yes.</p> <p>9 Q. Sitting here today, sir, is there</p> <p>10 anything whatsoever improper about the loan and</p> <p>11 security agreement that has been marked as</p> <p>12 Plummer Exhibit 1?</p> <p>13 MR. MC BRIDE: Objection. Go ahead.</p> <p>14 A. No.</p> <p>15 Q. In fact, when you reviewed it, you</p> <p>16 concluded that it was a fully appropriate loan</p> <p>17 and security agreement for an asset-backed loan</p> <p>18 secured in this instance by art collateral?</p> <p>19 MR. MC BRIDE: Objection.</p> <p>20 A. I don't think I made any mention,</p> <p>21 I -- yes and I don't think I made any mention</p> <p>22 of it.</p> <p>23 Q. Fair enough. Believe it or not, I</p> <p>24 was trying to actually not put words in your</p> <p>25 mouth. You haven't raised any criticism</p>

<p style="text-align: right;">Page 70</p> <p>1 Plummer - Confidential</p> <p>2 whatsoever about the loan and security</p> <p>3 agreement that has been marked as Exhibit 1?</p> <p>4 A. No.</p> <p>5 Q. In fact, it indicates in the recital</p> <p>6 that the borrower has requested lender to make</p> <p>7 available revolving US dollar loan facility?</p> <p>8 A. Yeah.</p> <p>9 Q. Then there is the loan and the terms</p> <p>10 of the payment, correct?</p> <p>11 A. Yeah.</p> <p>12 Q. Loan commitment, right?</p> <p>13 A. Yes.</p> <p>14 Q. Maybe just turn to the next page.</p> <p>15 Do you see that it requires a qualified art</p> <p>16 appraisal as you would expect for every</p> <p>17 workmanlike loan and security agreement; yes,</p> <p>18 sir?</p> <p>19 A. Yes.</p> <p>20 MR. MC BRIDE: Objection.</p> <p>21 Q. Then there is the creation of the</p> <p>22 security interest that is Section 3 at the</p> <p>23 bottom of page 2, Plummer Exhibit 1?</p> <p>24 A. Yes.</p> <p>25 Q. And the creation of the security</p>	<p style="text-align: right;">Page 72</p> <p>1 Plummer - Confidential</p> <p>2 Section 5.4, "Obligations to Maintain</p> <p>3 Collateral Insurance," correct?</p> <p>4 A. Correct.</p> <p>5 Q. We can agree that is an important</p> <p>6 term that redounded to the benefit of lender</p> <p>7 Athena Art?</p> <p>8 MR. MC BRIDE: Objection.</p> <p>9 A. Yes.</p> <p>10 Q. Of course.</p> <p>11 A. Yes.</p> <p>12 Q. And just flipping through this</p> <p>13 document, is there anything whatsoever in your</p> <p>14 expert opinion that should have been in the</p> <p>15 loan and security agreement executed by Athena</p> <p>16 and the borrower Plummer Exhibit 1 that isn't</p> <p>17 in here?</p> <p>18 MR. MC BRIDE: Objection.</p> <p>19 A. No.</p> <p>20 Q. We are done with that one.</p> <p>21 Mr. Plummer, I just handed you what the court</p> <p>22 reporter has marked as Plummer Exhibit number</p> <p>23 2.</p> <p>24 (Whereupon document was marked</p> <p>25 Exhibit 2 for identification as of this</p>
<p style="text-align: right;">Page 71</p> <p>1 Plummer - Confidential</p> <p>2 interest in collateral provisions are necessary</p> <p>3 to secure an interest for purposes of the UCC,</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 Q. Look at 3.3, there is a continuing</p> <p>7 security interest, correct?</p> <p>8 A. Correct.</p> <p>9 Q. I don't know, flipping forward page</p> <p>10 4, Section 4, there is a series of</p> <p>11 representations and warranties, correct?</p> <p>12 A. Yes, correct.</p> <p>13 Q. Can we agree that the</p> <p>14 representations and warranties that the</p> <p>15 borrower made to Athena were extensive?</p> <p>16 A. Yes.</p> <p>17 Q. Can you think of a single rep or</p> <p>18 warranty that should have been in this loan and</p> <p>19 security agreement but wasn't?</p> <p>20 MR. MC BRIDE: Objection.</p> <p>21 A. No.</p> <p>22 Q. Turning to 4.3, there is description</p> <p>23 terms about borrower collateral, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Turning to the next page, page 6,</p>	<p style="text-align: right;">Page 73</p> <p>1 Plummer - Confidential</p> <p>2 date.)</p> <p>3 Q. After you have taken a look at it,</p> <p>4 can you state for the record in your words what</p> <p>5 is Plummer Exhibit 2?</p> <p>6 A. (Witness reviewing document).</p> <p>7 Plummer Exhibit 2 is the purchase agreement</p> <p>8 from Phillips to Inigo Philbrick for the</p> <p>9 Basquiat for purchase price of \$12,500,000 plus</p> <p>10 applicable sales text.</p> <p>11 Q. What is the date of the private sale</p> <p>12 buyer agreement?</p> <p>13 A. July 27, 2016.</p> <p>14 Q. You're familiar with Plummer</p> <p>15 Exhibit 2, sir?</p> <p>16 A. Yes.</p> <p>17 Q. You reviewed that to form your</p> <p>18 opinions, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Similar questions to the one we just</p> <p>21 went through with Mr. Brody's security</p> <p>22 agreement.</p> <p>23 Directing your attention to Plummer</p> <p>24 Exhibit 2, is there anything in this private</p> <p>25 sale buyer agreement that shouldn't be in here?</p>

<p style="text-align: right;">Page 74</p> <p>1 Plummer - Confidential</p> <p>2 A. That should not be in here?</p> <p>3 Q. Should not be in here.</p> <p>4 A. Not that I believe.</p> <p>5 Q. Okay, reverse question. Is there</p> <p>6 anything missing from Plummer Exhibit 2, the</p> <p>7 private sale buyer agreement in your mind?</p> <p>8 MR. MC BRIDE: Objection.</p> <p>9 A. Well, it's not unusual that</p> <p>10 Philbrick would be buying this under his name</p> <p>11 for somebody else, but I don't want to say that</p> <p>12 it would normally or always be -- such a thing</p> <p>13 would always be here.</p> <p>14 Q. Sir, all right, that's fair. You're</p> <p>15 entitled to your answer. I was asking a much</p> <p>16 more basic question.</p> <p>17 When it comes to private sale buyer</p> <p>18 agreements --</p> <p>19 A. Is this standard?</p> <p>20 Q. Yes?</p> <p>21 A. Yes.</p> <p>22 Q. In every respect, correct?</p> <p>23 A. Yes, correct.</p> <p>24 Q. And even today, years later, there</p> <p>25 is no question in your mind that Plummer</p>	<p style="text-align: right;">Page 76</p> <p>1 Plummer - Confidential</p> <p>2 A. Yes.</p> <p>3 Q. And is the provision about ownership</p> <p>4 a standard provision in such private sale buyer</p> <p>5 agreements in the art world?</p> <p>6 A. Yes.</p> <p>7 Q. And it says that ownership and the</p> <p>8 property shall pass to you, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And you is defined above as the</p> <p>11 buyer, Inigo Philbrick, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Upon receipt by Phillips of the full</p> <p>14 purchase, right?</p> <p>15 A. Correct.</p> <p>16 Q. Sitting here today that happened</p> <p>17 also, right?</p> <p>18 MR. MC BRIDE: Objection.</p> <p>19 A. In -- at the moment of this</p> <p>20 transfer, yes, but there are mitigating</p> <p>21 factors.</p> <p>22 Q. Things happened later, yes, sir? Is</p> <p>23 that your point?</p> <p>24 A. In the context of the payments that</p> <p>25 he made to Phillips to satisfy this agreement,</p>
<p style="text-align: right;">Page 75</p> <p>1 Plummer - Confidential</p> <p>2 Exhibit number 2 is authentic?</p> <p>3 A. Correct, and I have taken no issue</p> <p>4 with this.</p> <p>5 Q. Fair enough. You have no issue</p> <p>6 whatsoever with the appropriateness and the</p> <p>7 workmanlike nature of Plummer Exhibit 2?</p> <p>8 A. Correct.</p> <p>9 Q. And Plummer Exhibit 2 identifies the</p> <p>10 buyer as Inigo Philbrick, right?</p> <p>11 A. Yes.</p> <p>12 Q. And it states the purchase price is</p> <p>13 12.5 million, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And it states that the obligation</p> <p>16 for Mr. Philbrick to get the painting is that</p> <p>17 he has to give 12.5 million in good and in</p> <p>18 cleared funds by a certain date, right?</p> <p>19 A. Correct.</p> <p>20 Q. As you know, he fully complied with</p> <p>21 that obligation?</p> <p>22 MR. MC BRIDE: Objection.</p> <p>23 A. Yes.</p> <p>24 Q. And then there is a provision about</p> <p>25 ownership, correct, sir?</p>	<p style="text-align: right;">Page 77</p> <p>1 Plummer - Confidential</p> <p>2 the ownership was clouded by the contribution</p> <p>3 of his using Satfinance's funds.</p> <p>4 Q. None it of that is in this document,</p> <p>5 correct, sir?</p> <p>6 A. But this document does not reflect</p> <p>7 that.</p> <p>8 Q. The document says he has to give</p> <p>9 good and cleared funds, yes, sir?</p> <p>10 A. Correct.</p> <p>11 Q. Now we are working backwards, but</p> <p>12 that is okay. Your understanding of the facts</p> <p>13 are, in fact, that Phillips received good and</p> <p>14 cleared funds, correct?</p> <p>15 A. Correct.</p> <p>16 Q. From someone who in this contract is</p> <p>17 identified as the buyer, right?</p> <p>18 A. Correct.</p> <p>19 Q. And there is no doubt in your mind</p> <p>20 that thereafter Phillips discharged its</p> <p>21 obligation to pass ownership of the property to</p> <p>22 the buyer upon receipt of the good and clear</p> <p>23 funds?</p> <p>24 MR. MC BRIDE: Objection.</p> <p>25 A. Correct.</p>

20 (Pages 74 - 77)



<p style="text-align: right;">Page 98</p> <p>1 Plummer - Confidential</p> <p>2 MR. MC BRIDE: Objection.</p> <p>3 A. Sorry?</p> <p>4 Q. Sir, I'm not sure you have your</p> <p>5 facts straight. Was Boxwood paid with the</p> <p>6 proceeds from Athena?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. Yes, and those proceeds were passed</p> <p>9 on to IPL.</p> <p>10 Q. Okay, perfect. How is that not a</p> <p>11 payment?</p> <p>12 MR. MC BRIDE: Objection.</p> <p>13 A. Boxwood did not pay IPL in total for</p> <p>14 the artwork that it was using as collateral.</p> <p>15 Q. Sir, isn't that like every loan?</p> <p>16 MR. MC BRIDE: Objection.</p> <p>17 A. Not when the proceeds are going to a</p> <p>18 different party than the borrower who is</p> <p>19 receiving the loan.</p> <p>20 Q. Sir, okay, true or false, Boxwood</p> <p>21 received the loan proceeds from Athena?</p> <p>22 A. Right.</p> <p>23 Q. True, yes, sir?</p> <p>24 A. Yes.</p> <p>25 Q. Boxwood held title to the collateral</p>	<p style="text-align: right;">Page 100</p> <p>1 Plummer - Confidential</p> <p>2 Basquiat, but for the other works of art. But</p> <p>3 that amount of money did not cover all of the</p> <p>4 art that had been transferred to Boxwood. So</p> <p>5 the remainder of it had to be a loan and it was</p> <p>6 a loan that I have not seen documentation of.</p> <p>7 Q. Sir, you can pay for things with</p> <p>8 loans, right?</p> <p>9 A. Yes.</p> <p>10 Q. And we could at least agree that the</p> <p>11 Basquiat by every evaluation was way more than</p> <p>12 the amount that Athena was at risk, correct?</p> <p>13 MR. MC BRIDE: Objection.</p> <p>14 A. Yes.</p> <p>15 Q. And you're also familiar with</p> <p>16 intercompany loans, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have any more clarifying you</p> <p>19 would like to do on why this was an</p> <p>20 underwriting issue in your mind?</p> <p>21 MR. MC BRIDE: Objection.</p> <p>22 A. Because I didn't see any</p> <p>23 documentation or it wasn't discussed that this</p> <p>24 would be an intercompany loan. It wasn't that</p> <p>25 any -- anything that I saw that it was</p>
<p style="text-align: right;">Page 99</p> <p>1 Plummer - Confidential</p> <p>2 that was backing the loan, correct?</p> <p>3 MR. MC BRIDE: Objection.</p> <p>4 A. I don't know that I would agree with</p> <p>5 that based on the other facts surrounding this</p> <p>6 case.</p> <p>7 Q. That came up later, but in terms of</p> <p>8 all the documents that you've seen at the time</p> <p>9 of underwriting, that's what it said, right?</p> <p>10 A. Right.</p> <p>11 Q. So, Boxwood received the proceeds</p> <p>12 from the loan which is money from Athena; yes,</p> <p>13 sir?</p> <p>14 A. Right.</p> <p>15 Q. And Boxwood was at least record</p> <p>16 holder of the painting, right?</p> <p>17 A. Right.</p> <p>18 Q. True, right?</p> <p>19 A. Yes.</p> <p>20 Q. How is that an underwriting failure?</p> <p>21 A. Well, the incremental amount that</p> <p>22 IPL received from adding the Basquiat to the</p> <p>23 collateral pool I think was in the range of</p> <p>24 \$3,000,000. That was then forwarded on to IPL</p> <p>25 to pay down the balance, not just for the</p>	<p style="text-align: right;">Page 101</p> <p>1 Plummer - Confidential</p> <p>2 contemplated that this was how the transaction</p> <p>3 would ultimately be handled.</p> <p>4 Q. Is it your testimony that there</p> <p>5 wasn't like a very deliberate choice to</p> <p>6 structure this loan through a SPV?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. Is it my -- am I arguing what?</p> <p>9 Q. Sir, when you testified that you</p> <p>10 weren't aware that there was any discussion of</p> <p>11 this item, I think is what you just said,</p> <p>12 right?</p> <p>13 MR. MC BRIDE: Objection.</p> <p>14 A. Nothing that I saw documented.</p> <p>15 Q. You didn't see this in the credit</p> <p>16 committee memo, sir?</p> <p>17 A. No, I don't recall seeing it in the</p> <p>18 credit memo.</p> <p>19 Q. That is where one would look, right?</p> <p>20 A. Yes.</p> <p>21 Q. Is there any document in your mind</p> <p>22 that on any value to loan ratio that Athena was</p> <p>23 very well secured with this loan?</p> <p>24 MR. MC BRIDE: Objection.</p> <p>25 A. I wasn't arguing whether or not</p>

<p style="text-align: right;">Page 102</p> <p>1 Plummer - Confidential</p> <p>2 Athena was well secured. I was arguing about</p> <p>3 the transaction and the nature of the</p> <p>4 transaction and even the motivation for the</p> <p>5 transaction with Boxwood.</p> <p>6 Q. So the transaction -- so now we are</p> <p>7 talking about financial due diligence, right?</p> <p>8 MR. MC BRIDE: Objection.</p> <p>9 A. We are talking about legal due</p> <p>10 diligence, not just financial due diligence.</p> <p>11 Q. So you're not a lawyer, right? You</p> <p>12 don't want me asking legal questions, do you?</p> <p>13 A. No.</p> <p>14 Q. You are not offering any legal due</p> <p>15 diligence opinions, right?</p> <p>16 A. No, we're not.</p> <p>17 Q. Did you review the Subordination</p> <p>18 Agreement?</p> <p>19 A. No.</p> <p>20 Q. Have you ever heard of a</p> <p>21 Subordination Agreement?</p> <p>22 A. Yes.</p> <p>23 Q. So to be clear, have you read an</p> <p>24 agreement of subordination and assignment as</p> <p>25 amended and restated between Boxwood Green</p>	<p style="text-align: right;">Page 104</p> <p>1 Plummer - Confidential</p> <p>2 MR. MC BRIDE: Objection.</p> <p>3 A. I do know there were reasons and I</p> <p>4 am suspicious of some of them.</p> <p>5 Q. Well, use of an SPV, sir, is very</p> <p>6 common in --</p> <p>7 A. I understand that.</p> <p>8 Q. You've got to let me finish my</p> <p>9 question. Use of a SPV is very common when it</p> <p>10 comes to asset-backed lending, right?</p> <p>11 A. Yes.</p> <p>12 Q. It is highly protective of the</p> <p>13 lender, yes, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Because it isolates the debt and the</p> <p>16 assets in ways that protect the lender from</p> <p>17 other creditors and crazy people out there,</p> <p>18 right?</p> <p>19 A. Yes, but those same reasons that</p> <p>20 protect it from creditors can also be a means</p> <p>21 for transferring assets the creditors have</p> <p>22 legal rights to.</p> <p>23 Q. Fine, sir, and that's precisely why</p> <p>24 SPVs are structured for asset-backed lending.</p> <p>25 It's actually a risk mitigant; isn't it?</p>
<p style="text-align: right;">Page 103</p> <p>1 Plummer - Confidential</p> <p>2 Limited, Inigo Philbrick, Inigo Philbrick</p> <p>3 Limited and Athena Art Finance?</p> <p>4 A. I don't believe I've seen that</p> <p>5 document.</p> <p>6 Q. What is a Subordination Agreement</p> <p>7 and Assignment?</p> <p>8 A. Subordination Agreement is when I</p> <p>9 believe you pledge someone else rights you have</p> <p>10 and subordinate your rights to theirs.</p> <p>11 Q. It's your testimony that whatever</p> <p>12 that you think was paid for or not paid for</p> <p>13 between Boxwood on the one hand and IPL on the</p> <p>14 other, resulted in poor financial due diligence</p> <p>15 of that particular loan extension?</p> <p>16 MR. MC BRIDE: Objection.</p> <p>17 A. I would say that it raised questions</p> <p>18 in my mind as to open issues, both the nature</p> <p>19 of it and the reasons it was happening in the</p> <p>20 first place.</p> <p>21 Q. So before we move on from this,</p> <p>22 because I think we are basically done with it,</p> <p>23 you do know there were reasons why this</p> <p>24 transaction was structured with Boxwood as an</p> <p>25 SPV, correct?</p>	<p style="text-align: right;">Page 105</p> <p>1 Plummer - Confidential</p> <p>2 MR. MC BRIDE: Objection.</p> <p>3 A. I understand that.</p> <p>4 Q. That's why Athena wanted it done</p> <p>5 this way, correct?</p> <p>6 MR. MC BRIDE: Objection.</p> <p>7 A. Yes and I question its motivations</p> <p>8 for doing that.</p> <p>9 Q. You're questioning Athena's</p> <p>10 motivations?</p> <p>11 A. Yes.</p> <p>12 Q. Is part of your expert opinion about</p> <p>13 what is in people's heads, sir?</p> <p>14 MR. MC BRIDE: Objection.</p> <p>15 A. I think -- no.</p> <p>16 Q. Go ahead.</p> <p>17 A. But my -- the way in which the due</p> <p>18 diligence was handled and the conditions of</p> <p>19 Philbrick's business at this time made me, and</p> <p>20 this is totally my opinion, feel that the</p> <p>21 reasons for using the SPV structure were to</p> <p>22 protect it from the very things that were</p> <p>23 happening that caused this problem in the first</p> <p>24 place.</p> <p>25 Q. And that's a feeling?</p>

27 (Pages 102 - 105)



<p style="text-align: right;">Page 106</p> <p>1 Plummer - Confidential</p> <p>2 A. It's an informed feeling.</p> <p>3 Q. We are going to go through your</p> <p>4 report and we are going to look at some facts.</p> <p>5 Okay, sir?</p> <p>6 A. Okay.</p> <p>7 Q. Mr. Plummer, do you recognize what</p> <p>8 has been marked as Plummer Exhibit 3.</p> <p>9 (Whereupon document was marked</p> <p>10 Exhibit 3 for identification as of this</p> <p>11 date.)</p> <p>12 A. Yes.</p> <p>13 Q. As your expert witness report, yes,</p> <p>14 sir?</p> <p>15 A. Give me a second.</p> <p>16 (Witness reviewing document). Yes.</p> <p>17 Q. Did you prepare this report?</p> <p>18 A. Yes, I did.</p> <p>19 Q. And you read it again before you</p> <p>20 came here, right?</p> <p>21 A. I did, yes.</p> <p>22 Q. You approved it before it went in?</p> <p>23 A. Yes.</p> <p>24 Q. Is everything in this expert report</p> <p>25 in your mind, Plummer Exhibit 3, completely</p>	<p style="text-align: right;">Page 108</p> <p>1 Plummer - Confidential</p> <p>2 Q. Are there any opinions in here for</p> <p>3 which you don't feel you have an adequate</p> <p>4 factual basis?</p> <p>5 A. Not that I can think of.</p> <p>6 Q. I mean you know this is a federal</p> <p>7 court proceeding, right?</p> <p>8 MR. MC BRIDE: Objection.</p> <p>9 A. Yes.</p> <p>10 Q. This needs to be more than just</p> <p>11 thoughts, right, sir?</p> <p>12 A. Of course.</p> <p>13 Q. You prepared Plummer Exhibit 3, your</p> <p>14 expert report, for this case, correct?</p> <p>15 A. Correct.</p> <p>16 Q. It's bespoke?</p> <p>17 A. Yes, there are some general</p> <p>18 descriptions of the industry that I have used</p> <p>19 in previous reports.</p> <p>20 Q. Did you start with another report</p> <p>21 when you wrote this one?</p> <p>22 A. Did I start with it?</p> <p>23 Q. Yes.</p> <p>24 MR. MC BRIDE: Objection.</p> <p>25 A. I used some general information from</p>
<p style="text-align: right;">Page 107</p> <p>1 Plummer - Confidential</p> <p>2 honest?</p> <p>3 A. It's completely honest from the</p> <p>4 information I had.</p> <p>5 Q. Well, earlier you testified you</p> <p>6 weren't suffering for any lack of information,</p> <p>7 right?</p> <p>8 MR. MC BRIDE: Objection.</p> <p>9 A. From what I know. One doesn't know</p> <p>10 what one doesn't know.</p> <p>11 Q. Well, sir, you weren't missing any</p> <p>12 information that changes your conviction and</p> <p>13 your opinions set forth in here; do you?</p> <p>14 MR. MC BRIDE: Objection.</p> <p>15 A. Not that I'm aware of.</p> <p>16 Q. As far as you are concerned, there</p> <p>17 is a factual basis for 100 percent of your</p> <p>18 opinions?</p> <p>19 MR. MC BRIDE: Objection.</p> <p>20 A. Except a few instances where I say</p> <p>21 I'm giving my opinion, yeah.</p> <p>22 Q. Well, sir, the entire thing is your</p> <p>23 opinion, sir, that's why you are being paid to</p> <p>24 be in the room, right?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 109</p> <p>1 Plummer - Confidential</p> <p>2 the other report.</p> <p>3 Q. I'm sorry, I'm not being specific</p> <p>4 enough. Did you open up a clean Word document</p> <p>5 and start typing?</p> <p>6 A. No, I edited from an older report.</p> <p>7 Q. You started with an older report and</p> <p>8 then kind of like modified it?</p> <p>9 MR. MC BRIDE: Objection.</p> <p>10 A. I started with some general issues</p> <p>11 of the -- on the art market.</p> <p>12 Q. Sir, how is an expert report from</p> <p>13 another matter the place to start for an expert</p> <p>14 report in this matter?</p> <p>15 MR. MC BRIDE: Objection.</p> <p>16 A. General issues about the art market</p> <p>17 are general issues about the art market.</p> <p>18 Q. Fair enough. So some part of this</p> <p>19 report is generic?</p> <p>20 MR. MC BRIDE: Objection.</p> <p>21 A. I wouldn't say generic. It's a</p> <p>22 description of what makes the art market</p> <p>23 different.</p> <p>24 Q. It's about the art market</p> <p>25 generically and it could apply to any number of</p>

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<p style="text-align: right;">Page 110</p> <p>1 Plummer - Confidential</p> <p>2 cases, correct?</p> <p>3 MR. MC BRIDE: Objection.</p> <p>4 A. Correct.</p> <p>5 Q. That makes it generic to the art</p> <p>6 market, yes, sir?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. My knowledge of the art market, yes.</p> <p>9 Q. Which report did you start with?</p> <p>10 MR. MC BRIDE: Objection.</p> <p>11 A. Can I answer?</p> <p>12 Q. You must.</p> <p>13 MR. MC BRIDE: I'm going to object</p> <p>14 on the basis that draft reports are</p> <p>15 protected.</p> <p>16 MR. SHAPIRO: The witness just</p> <p>17 testified that he prepared a report in</p> <p>18 this case starting with another report.</p> <p>19 The report he started with as the template</p> <p>20 for this one is a fair question.</p> <p>21 MR. MC BRIDE: I think that's -- you</p> <p>22 can answer that. For questions down this</p> <p>23 road, I'm going to object to draft</p> <p>24 reports.</p> <p>25 MR. SHAPIRO: Take them one at a</p>	<p style="text-align: right;">Page 112</p> <p>1 Plummer - Confidential</p> <p>2 opinions you would be offering?</p> <p>3 MR. MC BRIDE: Objection and I am</p> <p>4 going to instruct you only and to the</p> <p>5 extent you can do so without disclosing</p> <p>6 the substance of discussions between you</p> <p>7 and counsel.</p> <p>8 A. I don't know that I can.</p> <p>9 Q. Who is the counsel you refer to in</p> <p>10 paragraph two?</p> <p>11 A. Grossman.</p> <p>12 Q. Like Mr. Grossman or someone who</p> <p>13 works with Mr. Grossman?</p> <p>14 A. Both.</p> <p>15 Q. And they asked you to form an</p> <p>16 opinion on what you have as A, B and C; yes,</p> <p>17 sir?</p> <p>18 A. Yes.</p> <p>19 Q. Did they ask you on the phone?</p> <p>20 A. Yes.</p> <p>21 Q. Did they ask you anything other than</p> <p>22 A, B and C?</p> <p>23 MR. MC BRIDE: Objection. I would</p> <p>24 instruct you not to answer that.</p> <p>25 Q. Has anyone asked you to form an</p>
<p style="text-align: right;">Page 111</p> <p>1 Plummer - Confidential</p> <p>2 time.</p> <p>3 MR. MC BRIDE: I'll take them one at</p> <p>4 a time.</p> <p>5 MR. SHAPIRO: Fair enough.</p> <p>6 A. The Overton report.</p> <p>7 Q. The Overton report?</p> <p>8 A. Yes.</p> <p>9 Q. Why did you start with the Overton</p> <p>10 report?</p> <p>11 A. Because it had aspects, descriptions</p> <p>12 of particularly the credit industry that I</p> <p>13 thought were highly relevant to this report.</p> <p>14 Q. The Overton report, all right. Page</p> <p>15 3, Scope of the Opinion and Disclosures. Do</p> <p>16 you see that?</p> <p>17 A. Hmm-hmm.</p> <p>18 Q. Then there is item number 2 and</p> <p>19 there are three items, A, B and C, right?</p> <p>20 A. Right.</p> <p>21 Q. "Counsel has asked me to form an</p> <p>22 opinion with respect to the following;" is that</p> <p>23 true what you write here?</p> <p>24 A. Yeah.</p> <p>25 Q. Who determined what would be the</p>	<p style="text-align: right;">Page 113</p> <p>1 Plummer - Confidential</p> <p>2 opinion in this case that you refused to?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. So when you were commissioned to do</p> <p>5 this report, you knew you were doing it on</p> <p>6 behalf of SIL, right?</p> <p>7 A. Yes.</p> <p>8 Q. What is SIL?</p> <p>9 MR. MC BRIDE: Objection.</p> <p>10 A. Satfinance is a company owned by</p> <p>11 Sasha Pesko.</p> <p>12 Q. Who is that?</p> <p>13 A. A collector/investor based in</p> <p>14 London.</p> <p>15 Q. Have you ever met him?</p> <p>16 A. No.</p> <p>17 Q. Ever spoken to him?</p> <p>18 A. Yes.</p> <p>19 Q. Have you ever done due diligence on</p> <p>20 him?</p> <p>21 MR. MC BRIDE: Objection.</p> <p>22 A. A limited amount.</p> <p>23 Q. Where is he living?</p> <p>24 MR. MC BRIDE: Objection.</p> <p>25 A. Now he is living in London.</p>

<p style="text-align: right;">Page 118</p> <p>1 Plummer - Confidential</p> <p>2 A. Yes.</p> <p>3 Q. And then the rate that SIL and</p> <p>4 Mr. Pesko are compensating you is listed in</p> <p>5 paragraph six, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Turn the page. Here it says -- it</p> <p>8 lists some qualifications in kind of a</p> <p>9 narrative form, right?</p> <p>10 A. Hmm-hmm.</p> <p>11 Q. Yes, sir?</p> <p>12 A. Yes.</p> <p>13 Q. And then on page 5, it says the CV</p> <p>14 is Exhibit C. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Why don't we just go there, I think</p> <p>17 it will be easier, to Exhibit C and tell me</p> <p>18 when you are there.</p> <p>19 A. Okay, I'm there.</p> <p>20 Q. Starting at the bottom, Wharton.</p> <p>21 That's when you got the BS graduating in 1980,</p> <p>22 sir?</p> <p>23 A. Yes.</p> <p>24 Q. You graduated in three years?</p> <p>25 A. I was a transfer student.</p>	<p style="text-align: right;">Page 120</p> <p>1 Plummer - Confidential</p> <p>2 from 1980 to 1984?</p> <p>3 A. Well, since that was not yet a real</p> <p>4 industry to speak of, I only did one and it was</p> <p>5 one of the first and it was a very sizable one</p> <p>6 for the time. I think it was in the</p> <p>7 \$10,000,000 range if I remember correctly.</p> <p>8 Q. Were you the lead underwriter on</p> <p>9 that?</p> <p>10 A. No, I was not the lead underwriter.</p> <p>11 Q. You were a young guy at the time,</p> <p>12 right, that was your first job?</p> <p>13 A. Yes.</p> <p>14 Q. That was an asset-backed loan?</p> <p>15 A. Yes.</p> <p>16 Q. Was it the subject of a security</p> <p>17 agreement?</p> <p>18 A. Yes.</p> <p>19 Q. What was your role on that loan?</p> <p>20 A. Managing it from a day-to-day basis</p> <p>21 after the underwriting process, making the</p> <p>22 interest calculations, checking on the</p> <p>23 collateral, releasing collateral, getting new</p> <p>24 collateral.</p> <p>25 Q. Sure. So you were effectively</p>
<p style="text-align: right;">Page 119</p> <p>1 Plummer - Confidential</p> <p>2 Q. Okay. Right on. Then we have a</p> <p>3 category -- I'm working up from the bottom of</p> <p>4 the page -- called "Other" and there are two</p> <p>5 bullets, correct, sir?</p> <p>6 A. Yes.</p> <p>7 Q. One is called -- for something</p> <p>8 called the Luxury Marketing Council and then</p> <p>9 there is something called the American Friends</p> <p>10 of the London Academy?</p> <p>11 A. Yes.</p> <p>12 Q. Without in any way trivializing the</p> <p>13 importance of that involvement, do either of</p> <p>14 those two bullets have anything to do with</p> <p>15 asset-backed lending?</p> <p>16 A. No.</p> <p>17 Q. Moving on up, Sotheby's Treasury</p> <p>18 Department. This is where you worked in the</p> <p>19 credit department for 4 years, 40 years ago,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. First job out of college?</p> <p>23 A. Correct.</p> <p>24 Q. How many asset-backed loans did you</p> <p>25 underwrite at the Sotheby's Treasury Department</p>	<p style="text-align: right;">Page 121</p> <p>1 Plummer - Confidential</p> <p>2 performing an important loan servicing</p> <p>3 monitoring function on that loan?</p> <p>4 A. Correct.</p> <p>5 Q. And the loan servicing and</p> <p>6 monitoring starts after the loan is issued,</p> <p>7 right?</p> <p>8 A. Correct.</p> <p>9 Q. Can we agree, sir, that that is</p> <p>10 different than doing, you know, credit,</p> <p>11 underwriting risk assessment and so forth?</p> <p>12 A. Yes, correct.</p> <p>13 Q. Have I fairly covered the</p> <p>14 asset-backed lending experience with that one</p> <p>15 loan?</p> <p>16 A. I will add however that in addition</p> <p>17 to that loan, I was on a day-to-day basis</p> <p>18 approving and reviewing dealers, businesses for</p> <p>19 trade credit which was a version of</p> <p>20 asset-backed or of lending.</p> <p>21 Q. Dealer trade credit is essentially</p> <p>22 like warehouse facilities or something, right?</p> <p>23 A. Warehouse facilities?</p> <p>24 Q. You're not familiar with that term?</p> <p>25 A. I'm not sure how you mean it in this</p>

<p style="text-align: right;">Page 122</p> <p>1 Plummer - Confidential</p> <p>2 context.</p> <p>3 Q. That is very different than the</p> <p>4 Athena loan, correct?</p> <p>5 MR. MC BRIDE: Objection.</p> <p>6 A. Yes, that is different than the</p> <p>7 Athena loan, but it was analyzing dealers for</p> <p>8 credit capabilities and limits on their credit</p> <p>9 with Sotheby's, which was a big risk for</p> <p>10 Sotheby's because it was releasing the property</p> <p>11 to the client.</p> <p>12 Q. I understand. It's an auction</p> <p>13 house; yes, sir?</p> <p>14 A. Yes, sir.</p> <p>15 Q. It's a totally different business</p> <p>16 than what Athena is in?</p> <p>17 MR. MC BRIDE: Objection.</p> <p>18 A. It's not totally different, but it's</p> <p>19 different.</p> <p>20 Q. Where did Sotheby's make its money</p> <p>21 in 1984?</p> <p>22 MR. MC BRIDE: Objection.</p> <p>23 A. Well, it made its money off of that</p> <p>24 loan that I was telling you about and it makes</p> <p>25 its money off the dealers. They were an</p>	<p style="text-align: right;">Page 124</p> <p>1 Plummer - Confidential</p> <p>2 Q. Fair enough. Not to offend you with</p> <p>3 popcorn. It's an ancillary business to the</p> <p>4 auction business, yes, sir?</p> <p>5 A. No, I'm saying that dealer purchases</p> <p>6 were bigger than the private purchases, so this</p> <p>7 is the biggest part of the business.</p> <p>8 Q. And \$10,000,000 was a big deal to</p> <p>9 Sotheby's?</p> <p>10 A. Well, for this very first private</p> <p>11 loan, but we are talking dealers that were</p> <p>12 doing -- giving trade credit in the millions of</p> <p>13 dollars for other sectors for other businesses.</p> <p>14 Q. I understand, but that is trade</p> <p>15 credit that is different, yes, sir?</p> <p>16 A. Yes, it is different.</p> <p>17 Q. I understand that that is something</p> <p>18 that Sotheby does for those who use and direct</p> <p>19 others to use the valuable auction services.</p> <p>20 Got that.</p> <p>21 I'm talking about the asset-backed</p> <p>22 loan and that was the one you identified before</p> <p>23 where you had key responsibility as you</p> <p>24 described it for the servicing and monitoring</p> <p>25 and so forth, right?</p>
<p style="text-align: right;">Page 123</p> <p>1 Plummer - Confidential</p> <p>2 important part of the business. That credit</p> <p>3 was critical to the success of Sotheby's</p> <p>4 auctions.</p> <p>5 Q. Because you need to accommodate</p> <p>6 those customers, so you can make money on the</p> <p>7 auctions, right?</p> <p>8 A. Correct.</p> <p>9 Q. It's keeping your customers happy,</p> <p>10 right?</p> <p>11 A. Without taking too much credit risk.</p> <p>12 Q. It's like the popcorn at the car</p> <p>13 wash, right, the car wash is making money at</p> <p>14 the car wash and without taking too much risk</p> <p>15 they are giving, I don't know, popcorn?</p> <p>16 MR. MC BRIDE: Objection.</p> <p>17 Q. Right?</p> <p>18 A. Hardly a relevant comparison because</p> <p>19 the dealers were at least 50 percent or</p> <p>20 60 percent of the business. Back in 1980, '84,</p> <p>21 collectors -- Sotheby was not yet dealing</p> <p>22 directly with private collectors. They were</p> <p>23 dealing primarily with dealers. They were more</p> <p>24 like a wholesale auction house, so it was a</p> <p>25 completely different industry than it is today.</p>	<p style="text-align: right;">Page 125</p> <p>1 Plummer - Confidential</p> <p>2 A. Right.</p> <p>3 Q. And that included things like</p> <p>4 running interest calculations after the loan</p> <p>5 was done, right?</p> <p>6 A. Correct.</p> <p>7 Q. Any other loans like that</p> <p>8 \$10,000,000 loan during your four years?</p> <p>9 A. No.</p> <p>10 Q. How many asset-backed loans did you</p> <p>11 underwrite as the business manager for the</p> <p>12 Asian Art Division at Sotheby's from 1984 to</p> <p>13 '87?</p> <p>14 A. None.</p> <p>15 Q. Zero. Next line up. Is it correct</p> <p>16 that you then spent the next four years at</p> <p>17 Sotheby's International Realty?</p> <p>18 A. Correct.</p> <p>19 Q. That's a real estate business,</p> <p>20 right?</p> <p>21 A. Correct.</p> <p>22 Q. No asset-backed loans there, right?</p> <p>23 A. No.</p> <p>24 Q. Not even art world?</p> <p>25 A. No.</p>

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<p style="text-align: right;">Page 126</p> <p>1 Plummer - Confidential</p> <p>2 Q. Keep moving up. Then you were in a</p> <p>3 marketing role and a communications role for</p> <p>4 Sotheby's Marketing, correct?</p> <p>5 A. Correct.</p> <p>6 Q. That's very external facing as you</p> <p>7 would say?</p> <p>8 A. Correct.</p> <p>9 Q. That's not credit underwriting,</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. No loans there, right?</p> <p>13 A. Correct.</p> <p>14 Q. Moving up, then you became head of</p> <p>15 the marketing division for the Americas and</p> <p>16 Asia from 1993 to '96, right?</p> <p>17 A. Correct.</p> <p>18 Q. That was in the same reporting</p> <p>19 organization as your prior job in marketing; it</p> <p>20 was just a more senior role?</p> <p>21 A. Correct.</p> <p>22 Q. You were promoted, correct?</p> <p>23 A. Yes.</p> <p>24 Q. No loans between '93 and '96, right?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 128</p> <p>1 Plummer - Confidential</p> <p>2 '97 to 2000, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Can we agree, sir, that had nothing</p> <p>5 to do with loans?</p> <p>6 A. Correct.</p> <p>7 Q. That was a brand, a branding ad</p> <p>8 agency type business?</p> <p>9 A. Correct, correct.</p> <p>10 Q. So then from 2000 to 2003, you went</p> <p>11 to the ArtBase, Inc., correct?</p> <p>12 A. Correct.</p> <p>13 Q. No loans there, right, sir?</p> <p>14 A. Correct.</p> <p>15 Q. ArtBase was a software company,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. So then we get to 2003 to 2006 and</p> <p>19 that's when you were the COO of Fernwood Art</p> <p>20 Investments, correct?</p> <p>21 A. Correct.</p> <p>22 Q. That was the first time you had a</p> <p>23 C-Suite position, correct?</p> <p>24 MR. MC BRIDE: Objection.</p> <p>25 A. Well, unless you count ArtBase.</p>
<p style="text-align: right;">Page 127</p> <p>1 Plummer - Confidential</p> <p>2 Q. Then you left Sotheby's and you</p> <p>3 joined something called Accoustiguide, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And now Accoustiguide had nothing to</p> <p>6 do with lending either; did it?</p> <p>7 A. No.</p> <p>8 Q. Accoustiguide makes headsets, right,</p> <p>9 sir?</p> <p>10 A. No, they do audio tours for museums.</p> <p>11 Q. Fair enough. They do audio tours</p> <p>12 for museums that you listen to on the headset;</p> <p>13 it is the self-guided audio tours?</p> <p>14 A. Correct, but it's the content that</p> <p>15 they provide.</p> <p>16 Q. Fair enough. You're right. It's</p> <p>17 valuable content. In my mind it's the headset</p> <p>18 that you put on your head?</p> <p>19 A. But its intellectual content that</p> <p>20 they are providing.</p> <p>21 Q. Very intellectual, but it has</p> <p>22 nothing to do with loans?</p> <p>23 A. Correct.</p> <p>24 Q. All right. Moving up. The Carbone</p> <p>25 Smolan Agency, this is where you worked from</p>	<p style="text-align: right;">Page 129</p> <p>1 Plummer - Confidential</p> <p>2 Q. That was the first time you had a</p> <p>3 C-Suite position that had anything whatsoever</p> <p>4 to do with art or lending, right?</p> <p>5 MR. MC BRIDE: Objection.</p> <p>6 A. Yes. It was art lending, yeah.</p> <p>7 Q. Was it art lending?</p> <p>8 A. Art investment mostly.</p> <p>9 Q. So no loans at Fernwood, right?</p> <p>10 A. No loans at Fernwood, correct.</p> <p>11 Q. In fact, Fernwood turned out to be a</p> <p>12 colossal disaster; yes, sir?</p> <p>13 MR. MC BRIDE: Objection.</p> <p>14 A. It did end up being a disappointment</p> <p>15 because the founder of it had perpetrated a</p> <p>16 fraud.</p> <p>17 Q. It was a Ponzi of some sorts, right?</p> <p>18 A. No, it wasn't a Ponzi. It was --</p> <p>19 Q. It was just stolen money?</p> <p>20 MR. MC BRIDE: Objection.</p> <p>21 A. Yes.</p> <p>22 Q. You were the chief operating officer</p> <p>23 reporting to the CEO, correct?</p> <p>24 A. Correct.</p> <p>25 Q. This was the first time you had any</p>



<p style="text-align: right;">Page 130</p> <p>1 Plummer - Confidential</p> <p>2 significant responsibility for any part of art</p> <p>3 world involving financial services, right?</p> <p>4 MR. MC BRIDE: Objection.</p> <p>5 A. It was the first time I had a</p> <p>6 C-Suite title for such, yeah.</p> <p>7 Q. Well, sir, you hadn't had anything</p> <p>8 to do with financial services, all right, debt</p> <p>9 or equity at this point in nearly ten years,</p> <p>10 right, since you left Sotheby's Treasury</p> <p>11 Department, right?</p> <p>12 A. Correct.</p> <p>13 Q. And that turned out to be a flat out</p> <p>14 fraud, right?</p> <p>15 A. Not from me, but by the founder,</p> <p>16 yes.</p> <p>17 Q. I understand. You have been very</p> <p>18 clear it wasn't your fault. It was just a</p> <p>19 colossal failure, right?</p> <p>20 MR. MC BRIDE: Objection.</p> <p>21 A. Well, it was a disappointment and a</p> <p>22 failure in the sense that he was found out to</p> <p>23 be doing fraudulent activity. On the other</p> <p>24 hand, it was doing -- we had done some primary</p> <p>25 work and I had brought on board some of the</p>	<p style="text-align: right;">Page 132</p> <p>1 Plummer - Confidential</p> <p>2 A. Stole some money.</p> <p>3 Q. How many millions did he steal,</p> <p>4 Mr. Plummer?</p> <p>5 A. Two million.</p> <p>6 Q. That's a lot of money, right?</p> <p>7 A. Yeah.</p> <p>8 Q. What you just described sounded like</p> <p>9 a sales job to me.</p> <p>10 MR. MC BRIDE: Is there a question?</p> <p>11 A. What was a sales job?</p> <p>12 Q. What you just described about</p> <p>13 Fernwood Art Investment about getting everybody</p> <p>14 all excited sounds like a sales job to me.</p> <p>15 MR. MC BRIDE: No question. No</p> <p>16 question was asked.</p> <p>17 Q. Was it a sales job?</p> <p>18 A. No.</p> <p>19 Q. Was it an underwriting job?</p> <p>20 A. No.</p> <p>21 Q. Was it a risk management job?</p> <p>22 A. No, but it was an analysis of art as</p> <p>23 an asset job analyzing the markets, analyzing</p> <p>24 the viability of art as an asset and doing some</p> <p>25 very fundamental work on art market trends and</p>
<p style="text-align: right;">Page 131</p> <p>1 Plummer - Confidential</p> <p>2 leading dealers in the country because what we</p> <p>3 were doing was so pioneering and because it was</p> <p>4 so well thought of in terms of what we were</p> <p>5 accomplishing in terms of the research and the</p> <p>6 analysis of the art market and the work</p> <p>7 underlying work that it came to the attention</p> <p>8 of the chairman of Christie's that they hired</p> <p>9 me at Christie's as the CFO.</p> <p>10 Q. Let's talk about how proud you are</p> <p>11 about Fernwood Art Investments. It never</p> <p>12 extended a single asset-backed loan to anyone,</p> <p>13 did it?</p> <p>14 A. No, I never said it did.</p> <p>15 Q. Nothing to do with lending, right?</p> <p>16 A. Right.</p> <p>17 Q. So no part of your expertise that</p> <p>18 you claim in lending has anything to do with</p> <p>19 Fernwood Art, which never did a loan?</p> <p>20 MR. MC BRIDE: Objection.</p> <p>21 A. Right.</p> <p>22 Q. Then it turned out to be a total</p> <p>23 fraud because the gentleman that you reported</p> <p>24 to stole everyone's money, right?</p> <p>25 MR. MC BRIDE: Objection.</p>	<p style="text-align: right;">Page 133</p> <p>1 Plummer - Confidential</p> <p>2 pricing behavior.</p> <p>3 Q. Fine. So that's like an art market</p> <p>4 business development analysis job?</p> <p>5 A. No, no. It's an analysis of art as</p> <p>6 an asset and how it performs as an asset and</p> <p>7 what kinds of returns it has. So it was</p> <p>8 financial analysis of the art market and very</p> <p>9 indepth.</p> <p>10 Q. Did it have data?</p> <p>11 (Crosstalk).</p> <p>12 A. Yes, A lot of data.</p> <p>13 Q. Pricing sensitivities?</p> <p>14 A. Yes.</p> <p>15 Q. How did you calculate pricing</p> <p>16 sensitivities?</p> <p>17 A. We had a team that ran the analysis</p> <p>18 for us at the time. That's 20 years ago, so I</p> <p>19 can't remember all the specifics.</p> <p>20 Q. Did you do regression analysis?</p> <p>21 A. Yes.</p> <p>22 Q. How did you go about doing a</p> <p>23 regression analysis?</p> <p>24 A. I had someone working for me who did</p> <p>25 that, did the analysis.</p>

<p style="text-align: right;">Page 138</p> <p>1 Plummer - Confidential</p> <p>2 MR. MC BRIDE: Objection.</p> <p>3 A. I would say such a position is not</p> <p>4 of interest to me.</p> <p>5 Q. Okay, fair enough. I'm not trying</p> <p>6 to put too fine a point on it because I am not</p> <p>7 qualified to be a CFO either, but --</p> <p>8 A. And I do understand the distinction.</p> <p>9 Q. Fair enough. Like, you know, you're</p> <p>10 not qualified to have anything to do with like</p> <p>11 financial and accounting controls for example?</p> <p>12 MR. MC BRIDE: Objection.</p> <p>13 A. No, that's not true.</p> <p>14 Q. Sir, you're not an accountant,</p> <p>15 right?</p> <p>16 A. I had a very rigorous accounting</p> <p>17 background training at Wharton and I know quite</p> <p>18 a lot about it.</p> <p>19 Q. Sir, there is a difference between</p> <p>20 being an undergraduate in Wharton 40 years ago,</p> <p>21 around the time Donald Trump was an</p> <p>22 undergraduate at Wharton 40 years ago, and</p> <p>23 being a CFO of financial services.</p> <p>24 A. I'm objecting to your asserting that</p> <p>25 I have no qualifications on the matter.</p>	<p style="text-align: right;">Page 140</p> <p>1 Plummer - Confidential</p> <p>2 A. Three rather significant ones.</p> <p>3 Q. Three loans?</p> <p>4 A. Yep.</p> <p>5 Q. Did you do the full underwriting on</p> <p>6 those loans?</p> <p>7 A. No, I had one person working with</p> <p>8 me, helping with -- the assisting with the</p> <p>9 underwriting, doing the day-to-day details.</p> <p>10 Q. Like the underwriter, right?</p> <p>11 A. Yes.</p> <p>12 Q. What was her or his qualification?</p> <p>13 A. She had qualifications in</p> <p>14 underwriting from a major bank as I recall.</p> <p>15 Q. Qualifications that you, sir, do not</p> <p>16 have?</p> <p>17 A. I did not have those qualifications</p> <p>18 working for a bank, no.</p> <p>19 Q. And so far we have been through the</p> <p>20 whole list. You only had worked on one as</p> <p>21 society based loan in your life and that was</p> <p>22 back in the early '80s when you were</p> <p>23 responsible for servicing a loan underwritten</p> <p>24 by another, true?</p> <p>25 A. Probably, yeah.</p>
<p style="text-align: right;">Page 139</p> <p>1 Plummer - Confidential</p> <p>2 Q. Sir, do you have any reason to</p> <p>3 believe anyone would hire you as a CFO?</p> <p>4 A. I would never apply for a role as a</p> <p>5 for CFO.</p> <p>6 Q. Okay, fair enough, self select out.</p> <p>7 You were the COO of Christie's Financial</p> <p>8 Services, right?</p> <p>9 A. Correct.</p> <p>10 Q. What did the COO of Christie's</p> <p>11 Financial Services do when it comes to loan</p> <p>12 underwriting?</p> <p>13 A. I was responsible for managing an</p> <p>14 individual, as well as myself, for creating a</p> <p>15 global structure for underwriting loans for</p> <p>16 Christie's to offer as well as working with</p> <p>17 financial partners like US Trust and which</p> <p>18 became Bank of America later and Barclays to</p> <p>19 help them create underwriting processes for</p> <p>20 loans that they would do in partnership or for</p> <p>21 clients they would refer to -- Christie's would</p> <p>22 refer to them.</p> <p>23 Q. How many asset-backed loans did you</p> <p>24 sign off on as an underwriter while the COO of</p> <p>25 Christie's financial services?</p>	<p style="text-align: right;">Page 141</p> <p>1 Plummer - Confidential</p> <p>2 Q. I mean it's fair, sir, successful</p> <p>3 people can supervise others like that had</p> <p>4 different skill sets and experience, of course,</p> <p>5 right?</p> <p>6 A. Right.</p> <p>7 Q. I mean Jamie Dimon is a very</p> <p>8 successful banker, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Without knowing anything about his</p> <p>11 background, it's either investment banking or</p> <p>12 some other aspect of financial services, but</p> <p>13 probably not both, right?</p> <p>14 MR. MC BRIDE: Objection.</p> <p>15 A. Yes.</p> <p>16 Q. He has a number of expert credit</p> <p>17 underwriters reporting up to him probably</p> <p>18 indirectly, right?</p> <p>19 A. Yes.</p> <p>20 Q. What is the name of the person who</p> <p>21 reported to you at Christie's?</p> <p>22 A. Her name was -- do I have to answer</p> <p>23 that?</p> <p>24 Q. Yes.</p> <p>25 MR. MC BRIDE: Yes.</p>



<p style="text-align: right;">Page 142</p> <p>1 Plummer - Confidential</p> <p>2 A. Lisa Redpath.</p> <p>3 Q. How do you spell Lisa's last name?</p> <p>4 A. R-E-D-P-A-T-H.</p> <p>5 Q. And Lisa Redpath had meaningful</p> <p>6 credentials and experience as a credit</p> <p>7 underwriter from a big bank, correct?</p> <p>8 A. I believe it was a big bank, yeah.</p> <p>9 Q. Was she from art world?</p> <p>10 A. No, she was not from the art world,</p> <p>11 so I provided the art world insight.</p> <p>12 Q. The fact of the matter is it takes a</p> <p>13 village to run a good business?</p> <p>14 A. Absolutely.</p> <p>15 Q. You came with experience in</p> <p>16 different aspects of the art world and the</p> <p>17 passion for it, right, sir?</p> <p>18 A. Yes.</p> <p>19 Q. And she was a credit underwriter,</p> <p>20 right?</p> <p>21 A. Correct.</p> <p>22 Q. So you said there were three loans</p> <p>23 that were ultimately underwritten under your</p> <p>24 supervision at Christie's Financial Services?</p> <p>25 A. Hmm-hmm, yes.</p>	<p style="text-align: right;">Page 144</p> <p>1 Plummer - Confidential</p> <p>2 right?</p> <p>3 A. Correct. No, wait. Repeat the</p> <p>4 question.</p> <p>5 Q. Well, Christie's shut it down,</p> <p>6 right?</p> <p>7 A. Yes. It didn't fail.</p> <p>8 Q. It didn't fail. Christie's just</p> <p>9 decided that like an economic headwinds were</p> <p>10 shutting it down, right?</p> <p>11 A. They had capital constraints, very</p> <p>12 serious capital constraints.</p> <p>13 Q. So they shut down the business?</p> <p>14 A. So they had to pull back on many of</p> <p>15 their new initiatives.</p> <p>16 Q. They pulled back on the things they</p> <p>17 considered dispensable, vulnerable or weak,</p> <p>18 right?</p> <p>19 MR. MC BRIDE: Objection.</p> <p>20 A. They cut back on things that they</p> <p>21 couldn't afford to do.</p> <p>22 Q. So for whatever reason, sir, okay,</p> <p>23 your role as an executive at Christie's</p> <p>24 financial services came to a close when the</p> <p>25 owner named Christie's shut it down?</p>
<p style="text-align: right;">Page 143</p> <p>1 Plummer - Confidential</p> <p>2 Q. I'm sorry, you have to answer</p> <p>3 audibly.</p> <p>4 A. I understand.</p> <p>5 Q. Mr. Plummer, why did you leave</p> <p>6 Christie's in 2009?</p> <p>7 A. Because of the financial crisis they</p> <p>8 shut down the financial wing.</p> <p>9 Q. Christie's like made a business</p> <p>10 decision to just shut the whole thing down,</p> <p>11 right?</p> <p>12 A. Yes, because they were having --</p> <p>13 going through a very bad time after the crisis.</p> <p>14 They came off of the art market crash in 2008</p> <p>15 when in a real liquidity crunch so they had to</p> <p>16 pair themselves back to their core business.</p> <p>17 Q. So Fernwood Art Investments was the</p> <p>18 first time you had a senior role in any art</p> <p>19 business that also was financial services and</p> <p>20 it failed, yes, sir?</p> <p>21 A. Correct.</p> <p>22 Q. The next stop was Christie's</p> <p>23 Financial Services, which was the first time</p> <p>24 you had a senior role in any business that was</p> <p>25 art related that extended loans and it failed,</p>	<p style="text-align: right;">Page 145</p> <p>1 Plummer - Confidential</p> <p>2 A. Yes.</p> <p>3 Q. Why couldn't Christie's raise money</p> <p>4 for its lending business if it was successful?</p> <p>5 A. I don't know that I can reveal that.</p> <p>6 That's confidential information.</p> <p>7 Q. It didn't happen, right?</p> <p>8 A. It didn't happen and there were good</p> <p>9 reasons for it, but I'm not sure that I can</p> <p>10 reveal what they are.</p> <p>11 Q. That's fine, okay. It just shut it</p> <p>12 down. It didn't sell the business, did it?</p> <p>13 A. No.</p> <p>14 Q. It didn't refinance the business?</p> <p>15 A. No.</p> <p>16 Q. It just shut it down and everyone</p> <p>17 went home?</p> <p>18 MR. MC BRIDE: Objection.</p> <p>19 Q. Right?</p> <p>20 A. It was more complicated than that.</p> <p>21 Q. It always is, sir, but the business</p> <p>22 ceased to exist. It wasn't sold and it wasn't</p> <p>23 refinanced; all that is true?</p> <p>24 MR. MC BRIDE: Asked and answered.</p> <p>25 Q. Yes?</p>

<p style="text-align: right;">Page 150</p> <p>1 Plummer - Confidential</p> <p>2 In fact, it was in the --</p> <p>3 Q. Are you taking credit for like the</p> <p>4 exposure of Fernwood Art Investments as a</p> <p>5 fraud?</p> <p>6 MR. MC BRIDE: Objection.</p> <p>7 A. Yes, I am.</p> <p>8 Q. You were the COO of Fernwood Art</p> <p>9 Investors, correct?</p> <p>10 A. Right.</p> <p>11 Q. Earlier you testified you were the</p> <p>12 CFO, right?</p> <p>13 A. I meant COO.</p> <p>14 Q. Here in the article it says you are</p> <p>15 the CEO, right?</p> <p>16 A. That is typical Brook. I never was</p> <p>17 the CEO.</p> <p>18 Q. Okay, but regardless, you are quite</p> <p>19 proud of the role you had in exposing the fraud</p> <p>20 at the company for which you were the chief</p> <p>21 operating officer?</p> <p>22 MR. MC BRIDE: Objection.</p> <p>23 A. I would say it was a tragedy for</p> <p>24 many people, some of whom lost money that they</p> <p>25 shouldn't have lost, who couldn't afford to</p>	<p style="text-align: right;">Page 152</p> <p>1 Plummer - Confidential</p> <p>2 asset-backed lending, correct?</p> <p>3 A. It had to do with asset-backed</p> <p>4 lending in terms of identifying the stability</p> <p>5 of art as an asset and their attributes and</p> <p>6 their liquidity which has an indirect</p> <p>7 relationship to art as an asset-backed source</p> <p>8 for lending.</p> <p>9 Q. Sir, Fernwood Art Investments never</p> <p>10 extended a single asset-backed loan, true?</p> <p>11 A. No.</p> <p>12 Q. In fact, Fernwood Art Investments</p> <p>13 never did anything in terms of equity</p> <p>14 investment either, true?</p> <p>15 A. It depends on how you define that,</p> <p>16 but I would say no.</p> <p>17 Q. True, yes?</p> <p>18 A. True.</p> <p>19 Q. Right. I understood he raised money</p> <p>20 from other people and stole it, right, that</p> <p>21 ended up being kind of what was happening?</p> <p>22 A. It -- not the company, the founder,</p> <p>23 Bruce Taub.</p> <p>24 Q. And he raised it for Fernwood Art,</p> <p>25 right?</p>
<p style="text-align: right;">Page 151</p> <p>1 Plummer - Confidential</p> <p>2 lose it. So it was a tragedy on many levels.</p> <p>3 Q. On many levels? On every level?</p> <p>4 A. Okay, on every level.</p> <p>5 Q. It was a fraud, sir, and you were</p> <p>6 the chief operating officer?</p> <p>7 MR. MC BRIDE: No question.</p> <p>8 Q. Yes?</p> <p>9 A. Yes.</p> <p>10 Q. That is not a good thing, is it sir?</p> <p>11 MR. MC BRIDE: Objection.</p> <p>12 A. No.</p> <p>13 Q. Let's move on.</p> <p>14 A. Can I respond to that?</p> <p>15 Q. Your attorney can ask you some</p> <p>16 questions at the end in which he can raise</p> <p>17 anything that matters:</p> <p>18 No part of your fraud at Fernwood</p> <p>19 Art Investments had anything to do with an</p> <p>20 asset-backed loan; did it?</p> <p>21 MR. MC BRIDE: Objection.</p> <p>22 A. You just said my fraud.</p> <p>23 Q. Pardon me. No part of the fraud at</p> <p>24 the company for which you served as the chief</p> <p>25 operating officer had anything to do with</p>	<p style="text-align: right;">Page 153</p> <p>1 Plummer - Confidential</p> <p>2 A. Yes.</p> <p>3 Q. And you were the COO of that,</p> <p>4 correct?</p> <p>5 MR. MC BRIDE: Objection.</p> <p>6 A. I was the COO and in the process of</p> <p>7 having information withheld from me that I</p> <p>8 ultimately demanded Bruce Taub siphoned the</p> <p>9 remainder of the funds out of the company and</p> <p>10 split.</p> <p>11 Q. And you started demanding</p> <p>12 information and getting information after it</p> <p>13 was too late, right?</p> <p>14 A. No, there was still money in the</p> <p>15 accounts.</p> <p>16 Q. Well, it was too late for the</p> <p>17 roughly 3 million dollars that he had already</p> <p>18 stolen was spent, right?</p> <p>19 MR. MC BRIDE: Objection.</p> <p>20 A. No, there was still money there that</p> <p>21 would have covered the investors, but he</p> <p>22 withdrew that in the process of my trying to</p> <p>23 get the information from him.</p> <p>24 Q. That's stealing, right, sir?</p> <p>25 A. Yeah, and I'm not saying it wasn't.</p>

<p style="text-align: right;">Page 154</p> <p>1 Plummer - Confidential</p> <p>2 Q. Is there any more you want to tell</p> <p>3 me about Fernwood Art Investments which you</p> <p>4 think qualifies you as an expert in</p> <p>5 asset-backed lending?</p> <p>6 MR. MC BRIDE: Objection.</p> <p>7 A. I would say understanding art is an</p> <p>8 asset. It's important to understand the</p> <p>9 asset-backed lending.</p> <p>10 Q. Great, let's keep moving.</p> <p>11 Co-director of Spring Masters. As the</p> <p>12 co-director of Spring Masters, did you</p> <p>13 underwrite any asset-backed loans?</p> <p>14 A. No.</p> <p>15 Q. That is an art fair, right?</p> <p>16 A. Yes, but during that period we did</p> <p>17 art asset-backed loans at Artvest Partners.</p> <p>18 Q. We are not there yet, sir. I'm just</p> <p>19 working through your resume. I'm going through</p> <p>20 every single bullet, okay?</p> <p>21 A. Hmm-hmm.</p> <p>22 Q. Spring Masters is an art fair,</p> <p>23 right?</p> <p>24 A. Was, yes.</p> <p>25 Q. Was, okay. Likewise in the bullet</p>	<p style="text-align: right;">Page 156</p> <p>1 Plummer - Confidential</p> <p>2 A. Yes.</p> <p>3 Q. So that includes things like renting</p> <p>4 space, right?</p> <p>5 A. Correct.</p> <p>6 Q. Doing ticket sales, right?</p> <p>7 A. Yeah.</p> <p>8 Q. VIP packages, right?</p> <p>9 A. Yes.</p> <p>10 Q. Endless cocktail parties, right?</p> <p>11 A. Yes, it involves a whole bunch of</p> <p>12 other things.</p> <p>13 Q. I have seen the pictures. There is</p> <p>14 a lot of cocktail parties; yes, sir?</p> <p>15 A. There are some, but you know, it</p> <p>16 also involves getting to know the dealers well,</p> <p>17 getting to know the cash flows of their</p> <p>18 businesses, getting to know what they are</p> <p>19 selling and whatnot, getting to know the</p> <p>20 industry and how it's doing in any specific</p> <p>21 moment in time and understanding the underlying</p> <p>22 businesses that are functioning in the art</p> <p>23 business.</p> <p>24 Q. Sir, does that happen at every trade</p> <p>25 show for every profession?</p>
<p style="text-align: right;">Page 155</p> <p>1 Plummer - Confidential</p> <p>2 above that it says "Co-director and Co-owner of</p> <p>3 TEFAF?"</p> <p>4 A. Hmm-hmm.</p> <p>5 Q. And that's TEFAF, T-E-F-A-F. TEFAF,</p> <p>6 those are art fairs also, right?</p> <p>7 A. Hmm-hmm.</p> <p>8 Q. Yes, sir? You have to answer</p> <p>9 audibly.</p> <p>10 A. Yes.</p> <p>11 Q. Art fairs are trade shows; yes, sir?</p> <p>12 A. Yes.</p> <p>13 Q. In the sense that people within an</p> <p>14 industry come together at the trade show and</p> <p>15 there's people who do exhibitions and</p> <p>16 networking and there are booths, right?</p> <p>17 A. Yes, and it's the principal form of</p> <p>18 selling for dealers where they do the majority</p> <p>19 of their business for the year.</p> <p>20 Q. And running an art fair is like</p> <p>21 running a trade show; you have to deal with</p> <p>22 large numbers of people coming together who</p> <p>23 have a shared interest in a particular industry</p> <p>24 or profession?</p> <p>25 MR. MC BRIDE: Objection.</p>	<p style="text-align: right;">Page 157</p> <p>1 Plummer - Confidential</p> <p>2 MR. MC BRIDE: Objection.</p> <p>3 A. I don't know.</p> <p>4 Q. So when the ophthalmologists all get</p> <p>5 together and compare how they are examining</p> <p>6 people's eyes in the new laser technologies, at</p> <p>7 the booths, at the cocktail parties, it's</p> <p>8 critical networking, but it's fundamentally the</p> <p>9 same as an art fair or any trade show, right?</p> <p>10 MR. MC BRIDE: Objection.</p> <p>11 A. No, no. For instance, at the art</p> <p>12 fair you would learn that the post war area is</p> <p>13 doing well, but the old master sector is not.</p> <p>14 That the old master sector is having cash flow</p> <p>15 problems and the post war sector is having</p> <p>16 trouble finding inventory. So you have your</p> <p>17 finger on the pulse of the industry and what is</p> <p>18 happening and how businesses are dealing.</p> <p>19 Q. Fair enough, sir. So let's take</p> <p>20 another example.</p> <p>21 A trade show of fast food companies,</p> <p>22 right, at the trade show of the fast food</p> <p>23 companies do the different industry titans at</p> <p>24 the fast food chains have a pulse on their</p> <p>25 industry?</p>

<p style="text-align: right;">Page 158</p> <p>1 Plummer - Confidential</p> <p>2 MR. MC BRIDE: Objection.</p> <p>3 A. I don't know. I don't know that</p> <p>4 category.</p> <p>5 Q. Fair enough. Just as the masters</p> <p>6 may be up and the impressionists may be down,</p> <p>7 this could be a year for chicken as opposed to</p> <p>8 burgers, right, sir?</p> <p>9 MR. MC BRIDE: Objection.</p> <p>10 A. I don't know.</p> <p>11 Q. It's an industry trade show, right,</p> <p>12 sir?</p> <p>13 MR. MC BRIDE: Objection.</p> <p>14 A. It's more than that.</p> <p>15 Q. In fact, the dealers they rent</p> <p>16 booths from the trade show, right?</p> <p>17 A. Yes.</p> <p>18 Q. Booths, right? Do you have their</p> <p>19 bank statements when you rent booths for them?</p> <p>20 A. No, but we do have a sense of their</p> <p>21 liquidity by the speed with which they are able</p> <p>22 to pay for those booths and their discussions</p> <p>23 for looking for terms and whatnot because they</p> <p>24 can't afford to do it because their businesses</p> <p>25 aren't doing well.</p>	<p style="text-align: right;">Page 160</p> <p>1 Plummer - Confidential</p> <p>2 time for the booths, all right?</p> <p>3 MR. MC BRIDE: Objection.</p> <p>4 A. No, it's more than that. It's</p> <p>5 actually working with some of these people who</p> <p>6 are thought leaders in each of their categories</p> <p>7 in coming up with ways to reach new audiences,</p> <p>8 reach new clients, get the right environment</p> <p>9 where they are selling more, selling what they</p> <p>10 need to sell. It's actually engaging with them</p> <p>11 at a very high level about their businesses and</p> <p>12 how they operate.</p> <p>13 Q. You think that qualifies you to be</p> <p>14 an expert in asset-backed lending?</p> <p>15 MR. MC BRIDE: Objection.</p> <p>16 A. I think it gives me market</p> <p>17 intelligence on what attributes need to be</p> <p>18 found out and observed in asset-backed lending.</p> <p>19 Q. Has anyone ever shared with you</p> <p>20 proprietary credit underwriting guidelines in</p> <p>21 your role as the manager of a trade show?</p> <p>22 A. You mean has someone like Athena, a</p> <p>23 lender, shared their proprietary guidelines or</p> <p>24 has the dealer shared their bank statements</p> <p>25 with me?</p>
<p style="text-align: right;">Page 159</p> <p>1 Plummer - Confidential</p> <p>2 Q. Sir, are you suggesting that renting</p> <p>3 a booth at a trade show is anything like credit</p> <p>4 underwriting?</p> <p>5 MR. MC BRIDE: Objection.</p> <p>6 A. I'm not making a direct comparison,</p> <p>7 but I'm saying that credit underwriting</p> <p>8 involves analysis of the conditions, market</p> <p>9 conditions and having a sense of market</p> <p>10 conditions from being at an art fair, running</p> <p>11 an art fair and having close relationships with</p> <p>12 the dealers is very important market</p> <p>13 intelligence. So market intelligence is</p> <p>14 essential to good credit underwriting.</p> <p>15 Q. Right. It's talking to everybody in</p> <p>16 the biz, right, sir?</p> <p>17 MR. MC BRIDE: Objection.</p> <p>18 A. It's gathering market intelligence</p> <p>19 which is consistent with what I have to say,</p> <p>20 not your characterization or it.</p> <p>21 Q. Well, fair enough. And your role in</p> <p>22 running a trade show is to figure out how many</p> <p>23 booths are going to be -- who is going to get</p> <p>24 what booths, how much you are going to charge</p> <p>25 for it and chase the people who don't pay on</p>	<p style="text-align: right;">Page 161</p> <p>1 Plummer - Confidential</p> <p>2 Q. Well, I'm not asking about a dealer</p> <p>3 bank statements because you're not an expert in</p> <p>4 dealer bank statements in this case. You're an</p> <p>5 expert in asset-backed lending securitized in</p> <p>6 art, right?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. Yes.</p> <p>9 Q. Has an asset-backed lender shared</p> <p>10 with you their underwriting guidelines in</p> <p>11 connection with your role running the trade</p> <p>12 show?</p> <p>13 A. In connection with, no.</p> <p>14 Q. Of course not. Now earlier you</p> <p>15 testified that part of having your pulse on the</p> <p>16 industry is seeing how quickly or not quickly</p> <p>17 dealers pay for the space they rent or the</p> <p>18 booths they rent at the trade show, right?</p> <p>19 A. Hmm-hmm.</p> <p>20 Q. You have to answer audibly, sir.</p> <p>21 A. Yes.</p> <p>22 Q. Is it the case, sir, that the speed</p> <p>23 with which someone pays says something about</p> <p>24 their liquidity?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 170</p> <p>1 Plummer - Confidential</p> <p>2 it's more than that. It's 90 minutes a course,</p> <p>3 so it was five courses, so whatever that</p> <p>4 amounts to.</p> <p>5 Q. Do you get some credential that</p> <p>6 allows you to be a credit underwriter from</p> <p>7 Christie's Education?</p> <p>8 A. No.</p> <p>9 Q. Can anyone sign up for these</p> <p>10 classes?</p> <p>11 MR. MC BRIDE: Objection.</p> <p>12 A. Yes.</p> <p>13 Q. Right, like you don't need like a</p> <p>14 qualifying undergraduate or professional</p> <p>15 degree?</p> <p>16 A. You know, I don't know what</p> <p>17 Christie's qualifications are. I know they</p> <p>18 made it a core element of one of their core</p> <p>19 courses and I'm not sure if that larger course</p> <p>20 is accredited or not.</p> <p>21 Q. Do you have course materials that</p> <p>22 you use for Christie's Education on</p> <p>23 asset-backed lending?</p> <p>24 A. I do.</p> <p>25 Q. What are the materials about</p>	<p style="text-align: right;">Page 172</p> <p>1 Plummer - Confidential</p> <p>2 (Lunch recess taken.)</p> <p>3 AFTERNOON SESSION</p> <p>4 THE VIDEOGRAPHER: We are going on</p> <p>5 the record. The time is 1:44 p.m.</p> <p>6 BY MR. SHAPIRO:</p> <p>7 Q. Mr. Plummer, returning to Plummer</p> <p>8 Exhibit 4 which is your expert report --</p> <p>9 MR. MC BRIDE: Exhibit 3.</p> <p>10 Q. Pardon me. Mr. Plummer, returning</p> <p>11 to Plummer Exhibit 3, which is your expert</p> <p>12 report, would you please now turn to Exhibit D</p> <p>13 which is "Testimony, Publications and</p> <p>14 Presentations?"</p> <p>15 A. Okay.</p> <p>16 Q. Tell me when you are there.</p> <p>17 A. I'm here.</p> <p>18 Q. Why did you not list the Overton</p> <p>19 report under Testimony, Publications and</p> <p>20 Presentations?</p> <p>21 A. Because it was done in 2016 and I</p> <p>22 was advised by the attorneys involved in the</p> <p>23 case that it had not been filed. The case had</p> <p>24 been settled privately and that's why.</p> <p>25 Q. Well, sir, you disclosed an expert</p>
<p style="text-align: right;">Page 171</p> <p>1 Plummer - Confidential</p> <p>2 asset-backed lending that you use?</p> <p>3 A. They talk about the riskiness of the</p> <p>4 different art sectors, the liquidity of the</p> <p>5 different art sectors, the risks in certain</p> <p>6 works of art, the risks in valuations of works</p> <p>7 of art.</p> <p>8 Like, for example, how contemporary</p> <p>9 is the riskiest in terms of value and old</p> <p>10 masters and impressionists and modern are less</p> <p>11 risky in terms of value, various aspects of</p> <p>12 art, risks to art as an asset, authentication.</p> <p>13 Q. I'm talking about credit, sir. Do</p> <p>14 you teach credit boxes at Christie's Education?</p> <p>15 A. Credit boxes?</p> <p>16 Q. Yes.</p> <p>17 A. I'm not sure I understand that</p> <p>18 question.</p> <p>19 Q. You're not familiar with that term,</p> <p>20 credit box?</p> <p>21 A. No.</p> <p>22 Q. Why don't we take a lunch break?</p> <p>23 A. Okay.</p> <p>24 THE VIDEOGRAPHER: We are going off</p> <p>25 the record. The time is 1:00 p.m.</p>	<p style="text-align: right;">Page 173</p> <p>1 Plummer - Confidential</p> <p>2 witness report from a case in 2014, right?</p> <p>3 A. Yeah, because it was a prestigious</p> <p>4 prominent case and I think it spoke to my bona</p> <p>5 fides in general as an expert witness because</p> <p>6 it was such a prominent case for the Deloitte</p> <p>7 bankruptcy trial.</p> <p>8 Q. Is it fair to say, sir, that Exhibit</p> <p>9 D, Testimony, Publications and Presentations,</p> <p>10 are really testimony, publications and</p> <p>11 presentations that you, Michael Plummer, think</p> <p>12 are prestigious?</p> <p>13 MR. MC BRIDE: Objection.</p> <p>14 A. No, no. I thought the other one was</p> <p>15 confidential.</p> <p>16 Q. According to whom?</p> <p>17 A. I asked the attorney if it had been</p> <p>18 filed and if it was a matter of public record</p> <p>19 and he said no.</p> <p>20 Q. He said the Overton report is not a</p> <p>21 matter of public record?</p> <p>22 A. Yes.</p> <p>23 Q. What is the name of that lawyer?</p> <p>24 A. I -- should I share that name?</p> <p>25 Q. If you know it.</p>



<p style="text-align: right;">Page 174</p> <p>1 Plummer - Confidential</p> <p>2 A. I can't remember his last name.</p> <p>3 Q. So, sir, it's your testimony today</p> <p>4 that you left out the 2016 Overton expert</p> <p>5 report from this Federal Court expert report,</p> <p>6 Plummer Exhibit 3, because a gentleman, the</p> <p>7 name of which you do not know, told you?</p> <p>8 A. He, because he told me that it had</p> <p>9 not been filed publicly.</p> <p>10 Q. And you don't know what his name is?</p> <p>11 A. I would have to go back and find it</p> <p>12 for you.</p> <p>13 Q. When did you ask him?</p> <p>14 A. A couple of months ago.</p> <p>15 Q. And you don't remember his name?</p> <p>16 A. Not off the top of my head.</p> <p>17 Q. Sir, do you consider yourself</p> <p>18 obligated to give like truthful and complete</p> <p>19 lists of testimony, publications and</p> <p>20 presentations --</p> <p>21 MR. MC BRIDE: Objection.</p> <p>22 Q. -- on Plummer number 3?</p> <p>23 MR. MC BRIDE: Objection.</p> <p>24 A. Do I not feel obligated?</p> <p>25 Q. Do you consider yourself to be</p>	<p style="text-align: right;">Page 176</p> <p>1 Plummer - Confidential</p> <p>2 Q. I'm going to build a record, sir.</p> <p>3 Number one, did you understand the question I</p> <p>4 just asked you?</p> <p>5 A. The last question you asked me?</p> <p>6 Q. Yes, sir. I need to build a record</p> <p>7 here, so stick with me, sir.</p> <p>8 Number one, did you understand the</p> <p>9 last question I asked you?</p> <p>10 MR. MC BRIDE: Which question is</p> <p>11 that?</p> <p>12 Q. Let me try it again. I'm going to</p> <p>13 ask you a question and then afterwards my first</p> <p>14 question will be do you understand what I just</p> <p>15 asked you. So that's going to be a yes or a</p> <p>16 no. Okay?</p> <p>17 A. Okay.</p> <p>18 Q. Did you disclose to Judd Grossman or</p> <p>19 a member of his team at the law firm that you</p> <p>20 had omitted the Overton report from Exhibit D</p> <p>21 to your expert report, Plummer Exhibit 3?</p> <p>22 MR. MC BRIDE: I instruct you not to</p> <p>23 answer that question.</p> <p>24 Q. Do you understand that question?</p> <p>25 MR. MC BRIDE: You can answer,</p>
<p style="text-align: right;">Page 175</p> <p>1 Plummer - Confidential</p> <p>2 obligated to be truthful and honest and</p> <p>3 complete?</p> <p>4 A. Of course I do.</p> <p>5 Q. But you weren't?</p> <p>6 A. I was to the extent of what I</p> <p>7 thought I was told was true.</p> <p>8 Q. By a gentleman whose name you don't</p> <p>9 even know?</p> <p>10 A. I have to find the name of the</p> <p>11 attorney who I spoke to.</p> <p>12 Q. Is there any reason you couldn't</p> <p>13 have dropped a footnote and said I did</p> <p>14 something else, but it's top secret, so at</p> <p>15 least people would know you were hiding things?</p> <p>16 MR. MC BRIDE: Objection.</p> <p>17 A. I didn't think to do that.</p> <p>18 Q. Did you disclose to Mr. Grossman or</p> <p>19 his firm that you had withheld that</p> <p>20 information?</p> <p>21 MR. MC BRIDE: Objection. I</p> <p>22 instruct you not to respond to that.</p> <p>23 Q. You're going to follow your</p> <p>24 counsel's instruction?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 177</p> <p>1 Plummer - Confidential</p> <p>2 whether you understand the question.</p> <p>3 A. I understand the question.</p> <p>4 Q. Number two, without telling me the</p> <p>5 answer, do you know the answer to that</p> <p>6 question?</p> <p>7 A. Yes.</p> <p>8 Q. Number three, what is the answer to</p> <p>9 that question?</p> <p>10 MR. MC BRIDE: Don't answer that</p> <p>11 question.</p> <p>12 A. I take advice from my attorney.</p> <p>13 Q. So you're not going to answer that</p> <p>14 question?</p> <p>15 A. Correct.</p> <p>16 Q. But we can agree, sir, that you gave</p> <p>17 an expert report in 2016 in the Overton matter</p> <p>18 which was your starting point for your expert</p> <p>19 report in this case, yes, sir?</p> <p>20 MR. MC BRIDE: Objection.</p> <p>21 A. Yes.</p> <p>22 Q. And you did not disclose that in</p> <p>23 your expert report in this matter, right?</p> <p>24 A. Correct.</p> <p>25 Q. And that's based on a phone</p>

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1 Plummer - Confidential

2 conversation you had with a gentleman, the last

3 name of which you do not know?

4 A. I know. I know. I'm trying to

5 remember what it is and if you give me time, I

6 probably will remember it.

7 Q. And that gentleman told you it's

8 because the Overton report is private and has

9 never been public?

10 MR. MC BRIDE: Asked and answered.

11 A. Yes.

12 Q. Do you even know if that is true?

13 A. I went on the attorney's say so.

14 Q. Is he your attorney?

15 A. No, he was the attorney in the case.

16 Q. Were you deposed in that case?

17 A. No, it didn't reach the level of

18 deposition.

19 Q. That does happen. You also referred

20 to that expert report in this deposition,

21 right?

22 A. Sorry?

23 Q. You referred to the Overton report

24 in this deposition, right?

25 A. In the context of earlier -- your

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1 Plummer - Confidential

2 questioning earlier, yes.

3 Q. So confidentiality didn't stop you

4 then, did it?

5 A. That wasn't a confidential question

6 about whether or not I worked on the -- taken

7 the Overton thing as a starting point.

8 Q. So the fact of the Overton report

9 was not confidential because you shared it

10 before the lunch break, right?

11 MR. MC BRIDE: We can represent that

12 the Overton report had come out in a

13 report in this case.

14 Q. You said there was an Overton report

15 in 2016; that was your testimony, sir, right?

16 A. Yes.

17 Q. Is there any reason you couldn't

18 have said the fact of the Overton report in

19 your report in this matter?

20 MR. MC BRIDE: Asked and answered.

21 A. (No response.)

22 Q. Do you see the inconsistency there

23 at all, sir?

24 MR. MC BRIDE: Objection.

25 A. Not really.

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2 Q. Sir, did you think we weren't going

3 to locate the Overton report?

4 MR. MC BRIDE: Objection.

5 A. I didn't know. I wasn't trying to

6 keep it a secret. I just wasn't certain on the

7 propriety of discussing it.

8 Q. Sitting here today, do you know if

9 we reviewed the Overton report?

10 A. It's clear from the Katz rebuttal

11 that it was reviewed.

12 Q. Were you surprised?

13 A. Not necessarily.

14 Q. When you saw the Katz rebuttal, were

15 you glad you didn't disclose it?

16 MR. MC BRIDE: Objection.

17 A. No.

18 Q. Is there anything else that you

19 haven't disclosed in this report, sir?

20 MR. MC BRIDE: Objection.

21 A. No.

22 Q. Now is the time, Mr. Plummer, is

23 there anything else in Exhibit 3, your expert

24 report, that you didn't disclose and you want

25 to get out on the table right now?

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2 A. No.

3 Q. Okay. Because so the questions are

4 only going to get harder, okay, sir?

5 MR. MC BRIDE: Objection.

6 Q. Let's go to page 6. Paragraph 23.

7 A. Okay.

8 Q. Paragraph 23. In paragraph 23 do

9 you give kind of an overview of what the

10 purpose of this section of your report is?

11 MR. MC BRIDE: Objection. The

12 report speaks for itself.

13 Q. I'm asking him, sir.

14 A. Yeah.

15 Q. So Section 3 of your report is

16 providing context, correct?

17 A. Correct.

18 Q. Do you offer any opinion in

19 paragraph 23 about Athena?

20 A. No.

21 Q. It's background, right?

22 A. Right.

23 Q. In fact, is paragraph 23 taken from

24 your Overton report?

25 A. I don't believe so. It might have a



<p style="text-align: right;">Page 202</p> <p>1 Plummer - Confidential</p> <p>2 A. No, we used that rule of thumb at</p> <p>3 Sotheby's. We used that rule of thumb at</p> <p>4 Christie's. I have no reason -- there is no</p> <p>5 reason out there to doubt it.</p> <p>6 Q. Sir, you provide no support for it,</p> <p>7 sir. And don't tell me about what happened in</p> <p>8 1980 and '84 at your first job because you have</p> <p>9 no basis to say that the world hasn't changed</p> <p>10 in 40 years.</p> <p>11 A. It certainly was true of Christie's</p> <p>12 in 2007, 2008.</p> <p>13 Q. Okay, so how many years ago is that,</p> <p>14 sir?</p> <p>15 A. Well, I actually had discussions</p> <p>16 with Athena about referring them loans and this</p> <p>17 is what was told to me about Athena.</p> <p>18 Q. Sir, you had a discussion with</p> <p>19 Athena before your engagement in this matter?</p> <p>20 A. Yes. No, hang on. I had</p> <p>21 discussions with them about possibly doing</p> <p>22 loans with them that we did not do and this is</p> <p>23 information that was quoted to me by Athena.</p> <p>24 Q. Is it your testimony under oath that</p> <p>25 Athena says it uses fair market valuation?</p>	<p style="text-align: right;">Page 204</p> <p>1 Plummer - Confidential</p> <p>2 A. I told you I had a conversation with</p> <p>3 Athena on this when they were starting out with</p> <p>4 Andrea as to what their terms were.</p> <p>5 Q. So Andrea and Athena is the source</p> <p>6 of paragraph 28?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. He is one of multiple sources.</p> <p>9 Q. Name a source other than the party</p> <p>10 that is on the other --</p> <p>11 A. Is it Christie's?</p> <p>12 Q. Name a source of someone other than</p> <p>13 Athena who is on the other side of this case</p> <p>14 for which you support paragraph 28?</p> <p>15 MR. MC BRIDE: Objection.</p> <p>16 A. I'm not sure. On the other side of</p> <p>17 the case, are you saying someone who is</p> <p>18 involved in this specific case?</p> <p>19 Q. Sir, you just testified that the</p> <p>20 source of your information in paragraph 28 is</p> <p>21 the former CEO of Athena?</p> <p>22 A. No, I testified -- you asked me</p> <p>23 where I got my multiple sources from and I said</p> <p>24 a source was Andrea because you implied that my</p> <p>25 source information was too old and I am telling</p>
<p style="text-align: right;">Page 203</p> <p>1 Plummer - Confidential</p> <p>2 A. Are you talking about fair market</p> <p>3 value versus what they call market cash value?</p> <p>4 Are you talking about the difference between</p> <p>5 those two terminologies?</p> <p>6 Q. I'm talking about the basis for your</p> <p>7 opinion in paragraph 28.</p> <p>8 MR. MC BRIDE: There is no question.</p> <p>9 Q. Sir, one more time, okay.</p> <p>10 What is the entirety of your basis</p> <p>11 for your statement in paragraph 28 that the</p> <p>12 most common rule of thumb in underwriting in</p> <p>13 asset-backed loans secured by art is fair</p> <p>14 market valuation and then you take 50 percent</p> <p>15 of that to get to LTV?</p> <p>16 MR. MC BRIDE: Objection. Asked and</p> <p>17 answered.</p> <p>18 A. Yes, I think I have answered that</p> <p>19 question.</p> <p>20 Q. Have you done your very best to</p> <p>21 answer that question, sir?</p> <p>22 A. Yes.</p> <p>23 Q. You can't name the name of a single</p> <p>24 soul who has told you that, can you?</p> <p>25 MR. MC BRIDE: Objection.</p>	<p style="text-align: right;">Page 205</p> <p>1 Plummer - Confidential</p> <p>2 you that it was as recent as having a</p> <p>3 conversation with Andrea that I had it</p> <p>4 confirmed.</p> <p>5 Q. So let me be very clear, sir. I'm</p> <p>6 not implying anything. I am asking you if you</p> <p>7 have a basis to say anything in paragraph 28</p> <p>8 because so far all you've said is once upon a</p> <p>9 time you had a conversation with the guy who</p> <p>10 worked at J.P. Morgan and that the former CEO</p> <p>11 of Athena confirmed this fact at no point in</p> <p>12 history?</p> <p>13 MR. MC BRIDE: Objection.</p> <p>14 Mischaracterizes testimony. Asked and</p> <p>15 answered and you're badgering the witness.</p> <p>16 Answer. There is a question outstanding.</p> <p>17 Q. I'm asking you, do you have anything</p> <p>18 more for it or are you done?</p> <p>19 A. I have done loans.</p> <p>20 Q. You have not done loans. What loans</p> <p>21 have you done? You did three loans at the</p> <p>22 failed Christie's business 15 years ago, right?</p> <p>23 MR. MC BRIDE: Objection. Badgering</p> <p>24 the witness.</p> <p>25 Q. What loan have you underwritten</p>

<p style="text-align: right;">Page 206</p> <p>1 Plummer - Confidential</p> <p>2 since then?</p> <p>3 A. I underwrote loans at Artvest.</p> <p>4 Q. You were an underwriter at Artvest?</p> <p>5 A. No, I didn't underwrite. I</p> <p>6 consulted on loans.</p> <p>7 Q. You represented a borrower who was</p> <p>8 looking for some money, sir, right?</p> <p>9 A. Yes.</p> <p>10 Q. That's not underwriting, is it, sir?</p> <p>11 A. No, I misspoke. I did not mean to</p> <p>12 suggest I underwrote a loan, but I dealt with a</p> <p>13 lender. I was a go-between and their terms</p> <p>14 were exactly this.</p> <p>15 Q. Sir, sir, what lender discloses</p> <p>16 their credit guidelines?</p> <p>17 A. I just told you. I answered your</p> <p>18 question. I told you what it was and now</p> <p>19 you're saying no one would do that, would tell</p> <p>20 me that.</p> <p>21 Q. Sir, you're not an underwriter; you</p> <p>22 haven't underwritten a loan?</p> <p>23 A. I didn't say I was. I misspoke and</p> <p>24 said I was. I didn't mean to use the word</p> <p>25 underwriter.</p>	<p style="text-align: right;">Page 208</p> <p>1 Plummer - Confidential</p> <p>2 Q. Right. Those were the three loans,</p> <p>3 right, 15 years ago?</p> <p>4 A. They were in -- they were -- one was</p> <p>5 a \$60,000,000 loan and one was a hundred</p> <p>6 million dollar loan, so I do think that the</p> <p>7 impact of that on the balance sheet of</p> <p>8 Christie's made this a very meaningful</p> <p>9 transaction that needed to be done correctly.</p> <p>10 Q. Fair enough, sir. So you are saying</p> <p>11 you're an expert because you did three loans</p> <p>12 supervising a credit underwriter 15 years ago</p> <p>13 makes you an expert today in asset-backed</p> <p>14 loans?</p> <p>15 MR. MC BRIDE: Objection.</p> <p>16 A. No, I'm saying much more than that.</p> <p>17 I'm saying much more experience than that</p> <p>18 contributes me to being --</p> <p>19 Q. Right. It's just not credit</p> <p>20 experience, correct?</p> <p>21 A. It's credit experience plus other</p> <p>22 experience.</p> <p>23 Q. I got it. You're in the art world.</p> <p>24 I get that. Ms. Sachs, do you know how many</p> <p>25 loans she has underwritten?</p>
<p style="text-align: right;">Page 207</p> <p>1 Plummer - Confidential</p> <p>2 Q. What you said is that you have had</p> <p>3 clients from time to time who needed loans, so</p> <p>4 you helped them find bankers, right?</p> <p>5 A. Correct.</p> <p>6 Q. Is that why you think you're an</p> <p>7 expert in asset-backed lending?</p> <p>8 MR. MC BRIDE: Objection.</p> <p>9 A. My experience goes far beyond that.</p> <p>10 It's my experience in understanding art as an</p> <p>11 asset. It's my experience in understanding</p> <p>12 dealer businesses and creditworthiness. So it</p> <p>13 is my general experience in the industry</p> <p>14 overall and leads me to be asked to be an</p> <p>15 expert witness on this subject.</p> <p>16 Q. Okay, sir. I don't know why you</p> <p>17 were asked to be an expert witness, right,</p> <p>18 because I don't get into other people's heads,</p> <p>19 but other than what you have testified to</p> <p>20 today, have you underwritten any particular</p> <p>21 asset-backed loan that you think informs your</p> <p>22 judgment as to whether the underwriters at</p> <p>23 Athena did a good job?</p> <p>24 A. I would say the work we did at</p> <p>25 Christie's.</p>	<p style="text-align: right;">Page 209</p> <p>1 Plummer - Confidential</p> <p>2 A. I don't, but I was impressed with</p> <p>3 her CV, which is why I was surprised by some of</p> <p>4 the actions and decisions she made on the</p> <p>5 thing.</p> <p>6 Q. Sir, she has underwritten billions</p> <p>7 of dollars of loans, sir?</p> <p>8 A. I understand that.</p> <p>9 Q. You know something about Cynthia</p> <p>10 Sachs; she is rarely wrong, okay?</p> <p>11 MR. MC BRIDE: There is no question.</p> <p>12 Q. Do you know how many loans Athena</p> <p>13 has underwritten?</p> <p>14 A. I don't know exactly.</p> <p>15 Q. Do you know generally?</p> <p>16 A. Maybe, I know --</p> <p>17 MR. MC BRIDE: If you don't know.</p> <p>18 A. I don't know for sure. I heard</p> <p>19 numbers.</p> <p>20 Q. Is that not relevant?</p> <p>21 MR. MC BRIDE: Objection.</p> <p>22 A. I'm not sure that it is.</p> <p>23 Q. Sir, are you offering an opinion</p> <p>24 that Athena Art doesn't do a very good job</p> <p>25 underwriting art loans?</p>

<p style="text-align: right;">Page 226</p> <p>1 Plummer - Confidential</p> <p>2 A. This would be someone like and now</p> <p>3 we have talked about J.P. Morgan, but we</p> <p>4 haven't talked about Chase. This would be</p> <p>5 someone like Chase and also First Republic Bank</p> <p>6 who have over the years serviced the midlevel</p> <p>7 dealer community and they have used the income</p> <p>8 stream of the business rather than the art</p> <p>9 assets or general wealth portfolio to provide</p> <p>10 loans to the business and under that there is a</p> <p>11 general lien against the business and a lien</p> <p>12 against their art portfolio.</p> <p>13 And, for example, First Republic got</p> <p>14 into a great deal of difficulty with the Larry</p> <p>15 Salander scandal which I talk about later on in</p> <p>16 the document because they had a lien against</p> <p>17 the entire business and that's when there were</p> <p>18 different consignors and different owners and</p> <p>19 it became very confusing. For them to</p> <p>20 liquidate the business out of bankruptcy took</p> <p>21 them, I think, something like two or three</p> <p>22 years.</p> <p>23 Q. Because there the secured collateral</p> <p>24 was not in a separate SPV, correct?</p> <p>25 MR. MC BRIDE: Objection.</p>	<p style="text-align: right;">Page 228</p> <p>1 Plummer - Confidential</p> <p>2 Q. Only once?</p> <p>3 A. That I'm aware of.</p> <p>4 Q. The IRS?</p> <p>5 A. Yes.</p> <p>6 Q. That's the current lien, right?</p> <p>7 A. Right.</p> <p>8 Q. And that current lien has been</p> <p>9 outstanding since 2019?</p> <p>10 A. Yep.</p> <p>11 Q. And that was after your work with</p> <p>12 the art fairs ended in litigation, right?</p> <p>13 A. Correct.</p> <p>14 Q. There are other liens as well in the</p> <p>15 past, right?</p> <p>16 A. I don't know what they are or I</p> <p>17 don't remember what they are.</p> <p>18 MR. MC BRIDE: Objection.</p> <p>19 Q. Sir, have you, as a lender, placed</p> <p>20 more liens on other people than other people</p> <p>21 have placed liens on you?</p> <p>22 MR. MC BRIDE: Objection.</p> <p>23 A. I don't know that I have placed</p> <p>24 liens on anyone.</p> <p>25 Q. You just know that at least</p>
<p style="text-align: right;">Page 227</p> <p>1 Plummer - Confidential</p> <p>2 A. An SPV couldn't possibly have been</p> <p>3 done in a business like that.</p> <p>4 Q. I'm not sure what your basis for</p> <p>5 that is, but the fact of the matter is that you</p> <p>6 avoid that parade of horrors by ring fencing</p> <p>7 your debtor and your collateral in a SPV, true?</p> <p>8 A. No, it's generally considered too</p> <p>9 complicated and difficult for inventory when</p> <p>10 you are moving in and out of the premises and</p> <p>11 selling it all the time and turning it over.</p> <p>12 That's part of the complexity of doing</p> <p>13 exclusive live asset-backed loans for dealers.</p> <p>14 Q. Yes, that's why you need someone</p> <p>15 like Cynthia Sachs to understand how to</p> <p>16 underwrite them, right?</p> <p>17 MR. MC BRIDE: Objection.</p> <p>18 A. No, I don't agree with that.</p> <p>19 Q. You talk about a blanket lien. Have</p> <p>20 you ever put a blanket lien on anyone?</p> <p>21 A. I have not.</p> <p>22 Q. Has anyone ever put a lien on you?</p> <p>23 A. No.</p> <p>24 Q. Never?</p> <p>25 A. Once.</p>	<p style="text-align: right;">Page 229</p> <p>1 Plummer - Confidential</p> <p>2 governments have placed liens on you?</p> <p>3 A. I know of that particular loan which</p> <p>4 was because of an exceptional circumstance.</p> <p>5 Q. First Republic you just testified</p> <p>6 about; is that bank still around?</p> <p>7 A. I know it had a great deal of</p> <p>8 difficulty recently.</p> <p>9 Q. Yeah, like two weeks ago. Moving</p> <p>10 forward, auction house term loans, that is not</p> <p>11 Athena, right?</p> <p>12 A. No.</p> <p>13 Q. Auction house consignment advances,</p> <p>14 that is not Athena, right?</p> <p>15 A. No, but it's an important source of</p> <p>16 liquidity of dealers, a very highly important</p> <p>17 source of liquidity for dealers.</p> <p>18 Q. But there is nothing in paragraph</p> <p>19 30D which says Cynthia Sachs and her expert</p> <p>20 team did a good job or a bad job, right?</p> <p>21 A. No, this section wasn't discussing</p> <p>22 that.</p> <p>23 Q. In fact, it was lifted from the 2016</p> <p>24 Overton report?</p> <p>25 MR. MC BRIDE: Objection.</p>

<p style="text-align: right;">Page 246</p> <p>1 Plummer - Confidential</p> <p>2 financial services at lunch a couple of weeks</p> <p>3 ago, that the cost of and him you can ask about</p> <p>4 this, the higher the cost of the interest on</p> <p>5 the loan, the more of a burden it is on a</p> <p>6 dealer business and the higher the risk the</p> <p>7 business fails.</p> <p>8 Q. Okay, sir. So in your mind, if</p> <p>9 Athena had assessed lower interest, reduced</p> <p>10 pricing on Philbrick would that have reduced</p> <p>11 the risk of the Philbrick loan?</p> <p>12 A. I'm not saying that they should</p> <p>13 charge less. They have to charge what they</p> <p>14 have to charge to make it worthwhile what they</p> <p>15 are doing. I'm only arguing the point that</p> <p>16 charging a risk adjusted loan covers for the</p> <p>17 risk and makes it less -- not covers for the</p> <p>18 risk because it compensates for the risk, but</p> <p>19 it doesn't make the loan less risky.</p> <p>20 Q. Did you ever discuss this risk</p> <p>21 adjusted pricing with Amy who actually had the</p> <p>22 credit background at Christie's?</p> <p>23 A. Amy? No.</p> <p>24 Q. Five minutes, please.</p> <p>25 THE VIDEOGRAPHER: We are going off</p>	<p style="text-align: right;">Page 248</p> <p>1 Plummer - Confidential</p> <p>2 never be overlooked, avoided or waived away?</p> <p>3 A. Definitive proof of artwork</p> <p>4 ownership.</p> <p>5 Q. No, I'm not asking what they are.</p> <p>6 I'm asking what your source for that fact is.</p> <p>7 We are going to go through each three. Where</p> <p>8 does the fact come from?</p> <p>9 A. The fact comes from my experience</p> <p>10 and exposure to all the asset-backed lenders</p> <p>11 out there and work I have done with them and my</p> <p>12 time at Christie's.</p> <p>13 Q. So your time at Christie's with the</p> <p>14 three loans, right?</p> <p>15 A. Yes.</p> <p>16 Q. And your experience as an art</p> <p>17 advisor who helps borrowers find people to lend</p> <p>18 them money?</p> <p>19 A. Yes, and my experience at Sotheby's</p> <p>20 even if it was 40 years ago.</p> <p>21 Q. And that was one loan, sir?</p> <p>22 A. Yes, but also in dealing with credit</p> <p>23 issues, but yes.</p> <p>24 Q. But this is talking about</p> <p>25 asset-backed loans, right?</p>
<p style="text-align: right;">Page 247</p> <p>1 Plummer - Confidential</p> <p>2 the record. The time is 2:58 p.m.</p> <p>3 (Brief recess taken.)</p> <p>4 THE VIDEOGRAPHER: We are going on</p> <p>5 the record. The time is 3:21 p.m.</p> <p>6 BY MR. SHAPIRO:</p> <p>7 Q. If you would turn, Mr. Plummer, to</p> <p>8 paragraph 41 of your expert report, Plummer</p> <p>9 Exhibit 3?</p> <p>10 A. Yep.</p> <p>11 Q. Would you read the second sentence</p> <p>12 of paragraph 41 into the record and you can</p> <p>13 stop at the colon?</p> <p>14 A. The second sentence?</p> <p>15 Q. The second sentence of paragraph 41.</p> <p>16 A. "But there are several that are</p> <p>17 essential for an asset-backed loan, and cannot</p> <p>18 be overlooked, avoided or waived away."</p> <p>19 Q. And the "several" refers to several</p> <p>20 due diligence items?</p> <p>21 A. Yes.</p> <p>22 Q. Okay, sir. Tell me every fact you</p> <p>23 have for the proposition that in the world of</p> <p>24 asset-backed lending that there are several due</p> <p>25 diligence items that are essential and can</p>	<p style="text-align: right;">Page 249</p> <p>1 Plummer - Confidential</p> <p>2 A. Yes.</p> <p>3 Q. And there was only one of them in</p> <p>4 1982 down in Sotheby's, right?</p> <p>5 A. And then again consulting with</p> <p>6 clients to help them get the loans.</p> <p>7 Q. In which case you're not an</p> <p>8 underwriter; you're just simply trying to --</p> <p>9 A. I'm not an underwriter.</p> <p>10 Q. Pardon me. You're just simply</p> <p>11 trying to find a bank or financial institution</p> <p>12 that will extend them credit?</p> <p>13 A. And getting the information that the</p> <p>14 bank needed.</p> <p>15 Q. Right, which is like a shopping list</p> <p>16 of things to get, right, typically?</p> <p>17 A. That's not how I would characterize</p> <p>18 it.</p> <p>19 Q. It's a list of items to get, right?</p> <p>20 A. Correct.</p> <p>21 Q. Do you have any other sources for</p> <p>22 the statement that the four enumerated items in</p> <p>23 paragraph 41 are due diligence items that can</p> <p>24 never be overlooked, avoided or waived?</p> <p>25 A. Sorry, what was the question again?</p>

<p style="text-align: right;">Page 314</p> <p>1 Plummer - Confidential</p> <p>2 Q. Paragraph 43, back to Exhibit 3.</p> <p>3 Sir, did you take a deep dive into three of the</p> <p>4 Inigo Philbrick credit memos?</p> <p>5 A. Yes.</p> <p>6 Q. Is that true?</p> <p>7 A. I believe so.</p> <p>8 Q. Well, it's your report, sir. Is it</p> <p>9 true?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Turn to the back of your</p> <p>12 report, Exhibit D -- pardon me, Exhibit B where</p> <p>13 you list the documents relied upon.</p> <p>14 A. Right.</p> <p>15 Q. Do you see that?</p> <p>16 A. Yep.</p> <p>17 Q. As I review this, I see only two</p> <p>18 credit memos and that's the fifth and the sixth</p> <p>19 bullet. The first being a March 30, 2017</p> <p>20 credit memo and then the second being an</p> <p>21 April 6, 2017 credit memo?</p> <p>22 A. And my fault I neglected to mention</p> <p>23 the very first one which was from in July of</p> <p>24 2016.</p> <p>25 Q. Okay. So that was just --</p>	<p style="text-align: right;">Page 316</p> <p>1 Plummer - Confidential</p> <p>2 to take into full account of everything that</p> <p>3 had been done to date, correct?</p> <p>4 A. Correct.</p> <p>5 Q. That is why underwriters consider it</p> <p>6 to be significant to review the performance of</p> <p>7 a borrower under earlier arrangements before</p> <p>8 making new ones?</p> <p>9 A. Correct.</p> <p>10 Q. That's exactly what happened here,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Sir, how are you comfortable passing</p> <p>14 on the appropriateness of Ms. Sachs and her</p> <p>15 teams underwriting of later loans without</p> <p>16 reviewing the whole credit file?</p> <p>17 A. I was focused on the existing, the</p> <p>18 transaction, the Boxwood transaction.</p> <p>19 Q. But so the Boxwood transaction</p> <p>20 wasn't done in isolation?</p> <p>21 MR. MC BRIDE: No question.</p> <p>22 Q. Was it?</p> <p>23 A. I don't -- probably no.</p> <p>24 Q. No, the Boxwood transaction came</p> <p>25 after a series of underwritten credit</p>
<p style="text-align: right;">Page 315</p> <p>1 Plummer - Confidential</p> <p>2 A. An error.</p> <p>3 Q. Okay, just an error. How many</p> <p>4 credit memos did Athena prepare with regard to</p> <p>5 the borrowing relationship with Inigo Philbrick</p> <p>6 inclusive of IPL, inclusive of Boxwood?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. I had access to those three. I did</p> <p>9 not have access to all the others, any others.</p> <p>10 Q. Are you aware that there were any</p> <p>11 others?</p> <p>12 A. I was aware that there were others.</p> <p>13 Q. Because the later credit memos refer</p> <p>14 to the work that was conducted in connection</p> <p>15 with the earlier underwriting, correct?</p> <p>16 MR. MC BRIDE: Objection.</p> <p>17 A. Say that again.</p> <p>18 Q. Because the later credit memos that</p> <p>19 you reviewed refer to the work that was done in</p> <p>20 the earlier credit memos?</p> <p>21 A. Correct.</p> <p>22 Q. Is it fair to say that it's an</p> <p>23 obligation of any responsible asset-backed</p> <p>24 lender doing underwriting of an additional loan</p> <p>25 or a change to a loan to an existing borrower</p>	<p style="text-align: right;">Page 317</p> <p>1 Plummer - Confidential</p> <p>2 agreements, correct?</p> <p>3 A. Yes, another one if I remember</p> <p>4 correctly was a guarantee in addition to the</p> <p>5 Phillips guarantee, and there is another one</p> <p>6 which I can't remember exactly the details of.</p> <p>7 So I think we are talking two other credit</p> <p>8 memos.</p> <p>9 Q. Sir, were there six in total?</p> <p>10 A. There might have been.</p> <p>11 Q. You don't know, do you, sir?</p> <p>12 A. No, I don't know.</p> <p>13 Q. Because you didn't review the whole</p> <p>14 credit file, did you?</p> <p>15 A. No, I did not.</p> <p>16 Q. You didn't ask to review the whole</p> <p>17 credit file?</p> <p>18 A. No, I did not.</p> <p>19 Q. And one of your criticisms of</p> <p>20 Ms. Sachs' expertise is that she didn't do</p> <p>21 enough financial due diligence on Inigo</p> <p>22 Philbrick, the human, and IPL, the business, as</p> <p>23 guarantors, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And you have no idea of what due</p>



<p style="text-align: right;">Page 318</p> <p>1 Plummer - Confidential</p> <p>2 diligence was done, financial due diligence was</p> <p>3 done on either that human being or that entity</p> <p>4 in the earlier credit memos that you didn't</p> <p>5 review?</p> <p>6 MR. MC BRIDE: Objection.</p> <p>7 A. I do not know what was done in those</p> <p>8 credit memos. I base my decision on what was</p> <p>9 done on the largest loan and the biggest, the</p> <p>10 most important credit that Athena was extending</p> <p>11 to them.</p> <p>12 Q. It is the case, sir, that any</p> <p>13 responsible credit underwriter of an</p> <p>14 asset-backed loan or frankly any commercial</p> <p>15 loan has to take into account the diligence</p> <p>16 that was done before and the borrower's conduct</p> <p>17 with the lender?</p> <p>18 A. I know that in the context of the</p> <p>19 borrower's conduct with the lender that Inigo</p> <p>20 was being difficult in supplying information to</p> <p>21 Athena and that Cynthia, Ms. Sachs, was having</p> <p>22 difficulty in getting information out of Inigo</p> <p>23 and the fact that he actually walked away from</p> <p>24 the first loan at the demand for what was</p> <p>25 really reasonable information. He came back,</p>	<p style="text-align: right;">Page 320</p> <p>1 Plummer - Confidential</p> <p>2 federal judge on a collateral discovery issue</p> <p>3 and you considered that in forming your</p> <p>4 opinion, correct?</p> <p>5 A. Yes.</p> <p>6 Q. But you didn't consider the full</p> <p>7 credit file and an expert report about the</p> <p>8 underwriting, the credit underwriting of an</p> <p>9 asset-backed loan?</p> <p>10 MR. MC BRIDE: Objection.</p> <p>11 A. I thought I had the information that</p> <p>12 I needed for the analysis.</p> <p>13 Q. Sitting here today, do you think it</p> <p>14 would have been a good idea to review the whole</p> <p>15 credit file of this borrower and related</p> <p>16 entities before opining about whether it was</p> <p>17 appropriately underwritten?</p> <p>18 MR. MC BRIDE: Objection.</p> <p>19 A. I am not sure that it would have</p> <p>20 changed the issues that I raised.</p> <p>21 Q. You don't know because you didn't</p> <p>22 even look?</p> <p>23 MR. MC BRIDE: No question.</p> <p>24 Q. Correct?</p> <p>25 MR. MC BRIDE: Objection.</p>
<p style="text-align: right;">Page 319</p> <p>1 Plummer - Confidential</p> <p>2 but he walked away, as Cynthia referred to,</p> <p>3 peacocked on the loan.</p> <p>4 Q. Ms. Sachs also testified, if you</p> <p>5 want to see the basis for underwriting, you</p> <p>6 have to look at the credit file, right?</p> <p>7 A. Yes.</p> <p>8 Q. You didn't look at the credit file,</p> <p>9 so you don't know how she actually underwrote</p> <p>10 the loans ultimately before extending the</p> <p>11 valuable credit of the Athena Art Corporation?</p> <p>12 MR. MC BRIDE: Objection.</p> <p>13 A. No, she said look at the credit</p> <p>14 memos where the credit memos have the</p> <p>15 information. I looked at three of the credit</p> <p>16 memos.</p> <p>17 Q. You don't know what is in the other</p> <p>18 three?</p> <p>19 A. For the earlier smaller deals, two</p> <p>20 of the earlier smaller deals, I do not know.</p> <p>21 Q. Sir, you didn't even know there were</p> <p>22 six of them until I just told you; did you?</p> <p>23 A. I thought there were five.</p> <p>24 Q. So your counsel showed you a</p> <p>25 transcript of an argument that I made to a</p>	<p style="text-align: right;">Page 321</p> <p>1 Plummer - Confidential</p> <p>2 A. I -- I -- I have nothing to say.</p> <p>3 Q. There is no explanation for that, is</p> <p>4 there, sir?</p> <p>5 MR. MC BRIDE: Objection.</p> <p>6 A. There is. I thought I had the</p> <p>7 information I needed to do this analysis.</p> <p>8 Q. Right. You thought three out of</p> <p>9 five was enough and you didn't even know there</p> <p>10 were six, correct?</p> <p>11 MR. MC BRIDE: Objection. Asked and</p> <p>12 answered. Badgering the witness. Let's</p> <p>13 move on.</p> <p>14 Q. Is that fair?</p> <p>15 A. No.</p> <p>16 Q. It's not fair? What part of that is</p> <p>17 wrong?</p> <p>18 MR. MC BRIDE: Objection.</p> <p>19 A. I said I thought I had the</p> <p>20 information I needed to make the decisions I</p> <p>21 made.</p> <p>22 Q. That information just didn't happen</p> <p>23 to include the full credit file you were</p> <p>24 opining on?</p> <p>25 MR. MC BRIDE: Objection. Asked and</p>

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2 experience, sir.

3 MR. MC BRIDE: No question. There

4 is no question.

5 Q. Were you aware of that?

6 A. I thought it was probably in that

7 range.

8 Q. And in your mind that was not

9 significantly valuable to inform the art issues

10 that came up in underwriting?

11 MR. MC BRIDE: Objection.

12 A. I think, as you indicated before,

13 that extending credit in underwriting art loans

14 is a very complicated and underwriting in

15 general is a very complicated thing. And I

16 don't think ten years of experience is

17 significant in that context.

18 Q. Sir, you keep repeating about your

19 wonderful credit experience 40 years ago as a

20 28 year old with non ABL loans. Why is that

21 valuable then?

22 MR. MC BRIDE: Objection.

23 A. I am not going to respond to you

24 sitting there diminishing my experience in the

25 industry that crosses a whole bunch of aspects

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2 that relate to this that don't just have to do

3 with underwriting experience.

4 There is also experience of the

5 industry that is highly relevant to this that

6 would have helped uncover a lot of these

7 issues.

8 Q. What about Giovanna Quattrone?

9 A. I don't know her.

10 Q. So you don't know the relevant

11 experience and credentials and energy she

12 brings to the underwriting process?

13 A. No, I did not see her name in any of

14 the materials I reviewed.

15 Q. How about Nigel Glenday,

16 G-L-E-N-D-A-Y?

17 A. No.

18 Q. No idea what he does?

19 A. No.

20 Q. Have you ever heard of the company

21 Masterworks?

22 A. Yes.

23 Q. He's the CFO of Masterworks, sir?

24 MR. MC BRIDE: Presently.

25 A. Presently?

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1 Plummer - Confidential

2 Q. Yes, and before that he was at

3 Athena and you have no idea what his acumen,

4 experience and contributions were?

5 A. Was he part of the credit memo

6 process at this time?

7 Q. I don't get to answer the questions,

8 sir, but I have to have a basis for them, so

9 yes.

10 How about George Wilkinson?

11 MR. MC BRIDE: What is the question?

12 Q. Do you know what George Wilkinson's

13 contributions were?

14 A. Was he the CFO?

15 Q. If you know.

16 A. I do know that he played a role in

17 this.

18 Q. I'm asking, sir, because you drew a

19 conclusion that Athena lacked expertise?

20 A. Specifically in the art world.

21 Q. Correct, and I'm asking you about

22 all these other people who had expertise to see

23 if you knew anything about them.

24 MR. MC BRIDE: No question.

25 Q. Can you identify an asset based

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2 lender that extended credit on the basis of

3 securitized art that has a larger team than

4 Athena's?

5 MR. MC BRIDE: Objection. A larger

6 team?

7 MR. SHAPIRO: A larger team.

8 A. No, but I was addressing the fact

9 that the largest part of the Athena team was

10 from the Fintech sector outside of the art

11 market and I thought that there was an

12 imbalance there that in terms of decision

13 making power and authority that may have led to

14 this, this problem that we are talking about

15 here.

16 Q. Can you name me any successful

17 financial lending institution in any asset

18 class where the senior most people have to sign

19 off on credit, art credit people?

20 MR. MC BRIDE: Objection.

21 A. Sotheby's and Christie's.

22 Q. And you consider them to be

23 sophisticated financial institutions?

24 A. I think Sotheby's is the most

25 sophisticated and successful in asset-backed

<p style="text-align: right;">Page 330</p> <p>1 Plummer - Confidential</p> <p>2 lending of any organization in the world.</p> <p>3 Q. Does Sotheby's have better</p> <p>4 underwriting results than Athena?</p> <p>5 A. Their underwriting results aren't</p> <p>6 public, so I couldn't tell you.</p> <p>7 Q. So you have no basis for that at</p> <p>8 all?</p> <p>9 A. I know by the size of their</p> <p>10 portfolio and their success in the business</p> <p>11 that they're sufficiently happy with it, that</p> <p>12 it works for them.</p> <p>13 Q. Do you know what margins Sotheby's</p> <p>14 gets on its portfolio as compared to Athena?</p> <p>15 A. I generally understand it to be</p> <p>16 similar because I believe their cost of capital</p> <p>17 is similar and what they charge is similar.</p> <p>18 Q. That is sort of an assumption; isn't</p> <p>19 it?</p> <p>20 A. It's an informed assumption based on</p> <p>21 different pieces, sources of information, but</p> <p>22 it could be wrong, but --</p> <p>23 Q. When is the last time you saw a</p> <p>24 portfolio snapshot of the existing book of</p> <p>25 business at Sotheby's?</p>	<p style="text-align: right;">Page 332</p> <p>1 Plummer - Confidential</p> <p>2 something about the size of this market.</p> <p>3 The size of the asset-backed market</p> <p>4 is much smaller than people think. They were</p> <p>5 under pressure to grow the business and they</p> <p>6 had a very expensive burn rate, very expensive</p> <p>7 setup with all the staff that they had and</p> <p>8 that's my conclusion based on my outside</p> <p>9 analysis.</p> <p>10 Q. Okay, so why don't you turn to page</p> <p>11 39. And you'll see at the bottom of 39 of your</p> <p>12 report, Exhibit G, you refer to the intense</p> <p>13 pressure that Danese, Sachs and others in</p> <p>14 Athena's senior team were under?</p> <p>15 A. Yes, I see G.</p> <p>16 Q. Do you consider yourself an expert</p> <p>17 in the psychological state of Andrea Danese?</p> <p>18 A. No, but I do consider my expert --</p> <p>19 myself an expert in having a startup and small</p> <p>20 entrepreneurial business in the art world and</p> <p>21 having outside investors and knowing what it's</p> <p>22 like to -- what the results they expect.</p> <p>23 I also generally know what The</p> <p>24 Carlyle Group is looking for in terms of their</p> <p>25 investments and so it makes sense to me that</p>
<p style="text-align: right;">Page 331</p> <p>1 Plummer - Confidential</p> <p>2 A. Since it has not been public for</p> <p>3 several years, I have no insight into their</p> <p>4 portfolio now except that I know from having</p> <p>5 lunch with the head of it a couple of weeks ago</p> <p>6 that they are pretty happy with the -- with it</p> <p>7 and they had a big burst of activity recently</p> <p>8 and I believe they are close to a billion</p> <p>9 dollars in asset, in portfolio.</p> <p>10 Q. Is one of your opinions in this case</p> <p>11 that Athena would have closed the Boxwood loan</p> <p>12 no matter what?</p> <p>13 A. I believe I said something to that</p> <p>14 effect.</p> <p>15 Q. Yes. In fact, that's sort of your</p> <p>16 conclusion; isn't it, sir?</p> <p>17 MR. MC BRIDE: Objection.</p> <p>18 Q. You give an opinion that Mr. Danese</p> <p>19 and Ms. Sachs were under extraordinary</p> <p>20 pressure?</p> <p>21 A. Yes.</p> <p>22 Q. Do you have any facts for that?</p> <p>23 A. Various data points from observing</p> <p>24 them from outside, from the industry from</p> <p>25 observing them from outside and knowing</p>	<p style="text-align: right;">Page 333</p> <p>1 Plummer - Confidential</p> <p>2 they would be at this point in time looking to</p> <p>3 expand the portfolio.</p> <p>4 Q. Sir, do you know that's true or you</p> <p>5 are just saying that it would make sense that</p> <p>6 it's true?</p> <p>7 A. I think it's likely to be true.</p> <p>8 Q. Okay. Sir, are you offering an</p> <p>9 expert opinion that Andrea Danese, Cynthia</p> <p>10 Sachs and others in Athena's senior team</p> <p>11 compromised their underwriting judgment because</p> <p>12 of some sort of pressure they were feeling?</p> <p>13 MR. MC BRIDE: Objection.</p> <p>14 A. To be candid, I thought it was the</p> <p>15 only reason I could figure out that made sense</p> <p>16 for the decisions they made at the time in</p> <p>17 their underwriting process.</p> <p>18 Q. Sir, do you know how many loans</p> <p>19 Athena has passed on?</p> <p>20 A. I know, yes, I can easily guess</p> <p>21 based on the people that came to us at Artvest</p> <p>22 after we set up, put out our shingle. There</p> <p>23 are so many frauds out there and fake loans</p> <p>24 coming to the surface that that is not a</p> <p>25 measure of anything.</p>

<p style="text-align: right;">Page 334</p> <p>1 Plummer - Confidential</p> <p>2 We would get calls on a daily basis</p> <p>3 with all sorts of things. So I don't consider</p> <p>4 turning down loans to be a sign of much.</p> <p>5 Q. You think it's irrelevant?</p> <p>6 MR. MC BRIDE: Objection.</p> <p>7 A. Kind of.</p> <p>8 Q. Okay, sir. By the way, sir, when</p> <p>9 you are giving all your experience in startups</p> <p>10 in the art finance world, you haven't been</p> <p>11 associated with a successful one, have you?</p> <p>12 MR. MC BRIDE: Objection.</p> <p>13 A. Why do you say that?</p> <p>14 Q. Well, there was one which ended up</p> <p>15 in fraud lawsuits?</p> <p>16 A. Yeah.</p> <p>17 Q. And never did a loan and never did a</p> <p>18 deal. Then there was one that did three loans</p> <p>19 that you say were so fabulous, but that was</p> <p>20 shut down because the person who owned it</p> <p>21 didn't think it made sense.</p> <p>22 MR. MC BRIDE: I'm not sure what the</p> <p>23 question is.</p> <p>24 A. No, no.</p> <p>25 MR. MC BRIDE: There is no question.</p>	<p style="text-align: right;">Page 336</p> <p>1 Plummer - Confidential</p> <p>2 A. Yes, and I have heard good things</p> <p>3 about Rebecca in the industry.</p> <p>4 Q. Do you consider Sotheby's to be some</p> <p>5 sort of blue-chip when it comes to asset-backed</p> <p>6 lending?</p> <p>7 A. They make mistakes like everybody</p> <p>8 else does.</p> <p>9 Q. Do you know Sotheby's hired one of</p> <p>10 Rebecca Fine's former deputies to be its vice</p> <p>11 president of risk?</p> <p>12 A. That's great.</p> <p>13 Q. Have you ever sought a job from</p> <p>14 Athena, sir?</p> <p>15 A. No.</p> <p>16 Q. You never asked Steve Brody to reach</p> <p>17 out to Athena on your behalf for a job?</p> <p>18 A. No.</p> <p>19 Q. Okay.</p> <p>20 A. Oh, he had a contact with a certain</p> <p>21 organization, a bank that I asked him about,</p> <p>22 but I never asked him for a job at Athena, to</p> <p>23 get me a job at Athena, ever.</p> <p>24 Q. In fact, sir, you know that Athena</p> <p>25 would never hire you, sir?</p>
<p style="text-align: right;">Page 335</p> <p>1 Plummer - Confidential</p> <p>2 There is no question and you're harassing</p> <p>3 the witness.</p> <p>4 A. I think I want to take a break.</p> <p>5 Q. What basis do you think you have the</p> <p>6 expertise?</p> <p>7 A. I want to take a break.</p> <p>8 THE VIDEOGRAPHER: We are going off</p> <p>9 the record. The time is 5:03.</p> <p>10 (Brief recess taken.)</p> <p>11 THE VIDEOGRAPHER: We are going on</p> <p>12 the record. The time is 5:17.</p> <p>13 BY MR. SHAPIRO:</p> <p>14 Q. Mr. Plummer, before the break I had</p> <p>15 a terrible omission. Do you know who Rebecca</p> <p>16 Fine is?</p> <p>17 A. Yes.</p> <p>18 Q. Do you consider Rebecca Fine to be</p> <p>19 someone who is in the art world?</p> <p>20 A. Yes, but focused in the legal part</p> <p>21 of the art world.</p> <p>22 Q. Do you think Rebecca Fine</p> <p>23 contributed in a meaningful and significant way</p> <p>24 to the underwriting of the partial loan that</p> <p>25 you focused on?</p>	<p style="text-align: right;">Page 337</p> <p>1 Plummer - Confidential</p> <p>2 MR. MC BRIDE: Objection.</p> <p>3 A. I don't want to work for Athena.</p> <p>4 Q. Do you remember the last time you</p> <p>5 spoke to Mr. Danese?</p> <p>6 A. He was a sponsor of the TEFAF Fair.</p> <p>7 Q. Do you remember right around the</p> <p>8 time that the Board of Directors of TEFAF</p> <p>9 parting ways with you and your partner that you</p> <p>10 had a meeting at Athena with Mr. Danese?</p> <p>11 A. Yes.</p> <p>12 Q. Do you remember it was a heated</p> <p>13 meeting?</p> <p>14 A. I do.</p> <p>15 Q. Mr. Danese threw you out of the</p> <p>16 office, didn't he, sir?</p> <p>17 A. We were trying to talk to him about</p> <p>18 his expectations as a sponsor relative to what</p> <p>19 he was paying and he got angry and asked us to</p> <p>20 leave.</p> <p>21 Q. Well, sir, that's a quite sanitized</p> <p>22 version of it; isn't it, sir?</p> <p>23 MR. MC BRIDE: Objection.</p> <p>24 A. That's what I remember.</p> <p>25 Q. Do you remember Mr. Danese saying in</p>

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<p style="text-align: right;">Page 338</p> <p>1 Plummer - Confidential</p> <p>2 some form of words that he considered you and</p> <p>3 Artvest to be fundamentally incompetent and</p> <p>4 rude and that he was sick of the manner with</p> <p>5 which you were speaking to him and other</p> <p>6 members of the team and he asked you to</p> <p>7 immediately leave the building?</p> <p>8 MR. MC BRIDE: Objection.</p> <p>9 A. I don't remember him saying that.</p> <p>10 Q. You don't remember being thrown out</p> <p>11 of the office?</p> <p>12 A. I remember asking him -- him asking</p> <p>13 us to leave and I don't remember any cause for</p> <p>14 him saying that other than our trying to</p> <p>15 discuss the terms of his sponsorship and what</p> <p>16 he was getting for it.</p> <p>17 Q. Is there any reason why you have now</p> <p>18 written two reports purporting to be an</p> <p>19 objective expert on Athena's underwriting</p> <p>20 practices with captions that say United States</p> <p>21 Federal Court on it and nowhere mentioned that</p> <p>22 you and your partner had a substantial business</p> <p>23 relationship with Athena that Athena didn't</p> <p>24 renew and it ended up with Athena literally</p> <p>25 throwing you out of its office?</p>	<p style="text-align: right;">Page 340</p> <p>1 Plummer - Confidential</p> <p>2 matter?</p> <p>3 MR. MC BRIDE: Objection.</p> <p>4 Q. You don't think that creates a</p> <p>5 potential bias in this matter?</p> <p>6 MR. MC BRIDE: Objection.</p> <p>7 A. I disagree with what was said that</p> <p>8 you're saying what was said in our discussion.</p> <p>9 Q. Sir, my question is, you don't think</p> <p>10 it was necessary to disclose the fact that you</p> <p>11 filed an expert report with a Federal Court</p> <p>12 criticizing an organization that paid yours</p> <p>13 hundreds of thousands of dollars and the</p> <p>14 relationship went so south that you were not</p> <p>15 even welcome on the premises?</p> <p>16 MR. MC BRIDE: Objection. Asked and</p> <p>17 answered. No legal expertise.</p> <p>18 Q. You didn't mention that in this</p> <p>19 report, sir?</p> <p>20 MR. MC BRIDE: Speaks for itself.</p> <p>21 A. I already addressed the issue.</p> <p>22 Q. Did it occur to you that you might</p> <p>23 want to mention that in a report?</p> <p>24 MR. MC BRIDE: Asked and answered.</p> <p>25 Let's move on.</p>
<p style="text-align: right;">Page 339</p> <p>1 Plummer - Confidential</p> <p>2 MR. MC BRIDE: Objection.</p> <p>3 A. We had a disagreement over the terms</p> <p>4 of the sponsorship and I immediately turned it</p> <p>5 over to another member of TEFAF. Remember this</p> <p>6 is a joint venture. It wasn't something we ran</p> <p>7 on our own. We had partners in this and then</p> <p>8 our partners continued to interface and work</p> <p>9 with Andrea to give him what he needed.</p> <p>10 Q. Sir, is there any reason why you</p> <p>11 didn't mention the fact that your personal</p> <p>12 relationship with Athena and Andrea Danese was</p> <p>13 simply so broken that you were thrown out of</p> <p>14 his office?</p> <p>15 MR. MC BRIDE: Objection.</p> <p>16 Q. Is there any reason you didn't</p> <p>17 mention that in your report?</p> <p>18 MR. MC BRIDE: Objection.</p> <p>19 A. I didn't think it was relevant</p> <p>20 because I interpreted it differently than you</p> <p>21 do.</p> <p>22 Q. Sir, Mr. Danese said essentially get</p> <p>23 out of here. I never want to see you again and</p> <p>24 I think you're incompetent and you don't think</p> <p>25 that creates an issue of potential bias in this</p>	<p style="text-align: right;">Page 341</p> <p>1 Plummer - Confidential</p> <p>2 MR. SHAPIRO: Pardon me. Don't</p> <p>3 interrupt my question.</p> <p>4 Q. Did it even occur to you that you</p> <p>5 may want to see something in a Federal Court</p> <p>6 expert report --</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 Q. -- that you had a financially</p> <p>9 significant relationship with Athena and that</p> <p>10 it ended in a way that resulted in you being</p> <p>11 kicked to the curb?</p> <p>12 MR. MC BRIDE: Objection. Asked and</p> <p>13 answered.</p> <p>14 A. I disagree with your</p> <p>15 characterization of it.</p> <p>16 Q. Fair enough, sir. It was a big</p> <p>17 dispute and you didn't mention it in your</p> <p>18 report. Why didn't you mention it in your</p> <p>19 report?</p> <p>20 MR. MC BRIDE: Objection. Asked and</p> <p>21 answered.</p> <p>22 I also take this opportunity to</p> <p>23 direct the witness not to disclose any</p> <p>24 substantive discussion with counsel with</p> <p>25 regard to any question about why you did</p>



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2 or did not include anything in your

3 report.

4 Q. It didn't occur to you, sir, to

5 disclose that in your report?

6 MR. MC BRIDE: Objection. Asked and

7 answered.

8 A. I have said what I have to say on

9 the matter.

10 Q. You have nothing more to say on that

11 matter; do you, sir?

12 MR. MC BRIDE: Objection.

13 A. I have nothing more to say.

14 Q. Do you remember at the beginning of

15 the deposition I asked if you thought there was

16 any reason why anyone could question your

17 objectivity or independence? Do you remember

18 that question?

19 A. Yes.

20 MR. MC BRIDE: Objection.

21 Q. And you said no, right?

22 A. Correct.

23 Q. And you remember that right before a

24 break I asked is there anything else you want

25 to get out on the table and you said no, right?

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2 A. Correct.

3 Q. Sir, you filed an expert report

4 being critical of Mr. Danese, suggesting that

5 he was not competent, taking a position adverse

6 to Athena without mentioning that Athena had

7 paid you and your partner literally hundreds of

8 thousands of dollars.

9 A. Well, that's incorrect.

10 MR. MC BRIDE: No question. No

11 question.

12 Q. Sir, we have the invoices.

13 MR. MC BRIDE: No question has been

14 asked.

15 Q. And we have all the e-mail.

16 MR. MC BRIDE: No question has been

17 asked.

18 Q. Did that occur to you?

19 MR. MC BRIDE: Did what occur to

20 him?

21 Q. That we have the invoices and the

22 e-mail.

23 A. Invoices to whom?

24 MR. MC BRIDE: Objection. You're

25 badgering the witness.

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2 A. TEFAF?

3 Q. Artvest.

4 A. Artvest was never paid any money.

5 Q. It was paid by TEFAF, wasn't it,

6 sir?

7 A. What?

8 Q. Artvest was paid by TEFAF?

9 A. Okay.

10 Q. And Athena paid TEFAF and after the

11 relationship with Athena broke down, it was

12 right around the time that TEFAF also showed

13 you the door and the next thing that happened

14 was that there was an IRS lien against you,

15 sir; that's the chronology, right?

16 MR. MC BRIDE: Wonderful sleuthing.

17 There is no question to you. Nothing to

18 say.

19 A. I couldn't --

20 MR. MC BRIDE: There is no question.

21 Q. Are those the facts?

22 MR. MC BRIDE: Objection.

23 A. No.

24 Q. Those facts are all wrong?

25 MR. MC BRIDE: Objection.

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2 A. They are not. I have nothing -- I

3 disagree on such a profound level as to what

4 you are trying to imply and what you are saying

5 outright. That it's just wrong.

6 Q. Sir, I'm not implying anything. I'm

7 going to ask one more time. Do you have any

8 possible explanation for failing to disclose in

9 your Federal Court expert report that you and

10 your organization had a very large financial

11 relationship with Athena, that that

12 relationship ended and it ended with you being

13 asked to leave the building?

14 MR. MC BRIDE: Objection. Asked and

15 answered. No legal expertise. Don't

16 answer the question.

17 Q. If you have no further explanation,

18 we can move on.

19 MR. MC BRIDE: No question.

20 A. Nothing more to say.

21 Q. Nothing more to say on that topic?

22 A. No.

23 Q. Did you think this wouldn't come up

24 at your deposition?

25 MR. MC BRIDE: Objection.

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2 Q. I'm just asking, did you think this

3 topic wouldn't come up?

4 MR. MC BRIDE: You're badgering the

5 witness. Let's move on.

6 A. I have nothing more to say.

7 Q. Directing your attention to what is

8 now Plummer Exhibit 6. This is the Stephanie

9 Overton expert report that you also didn't

10 disclose. Do you recognize it?

11 (Whereupon document was marked

12 Exhibit 6 for identification as of this

13 date.)

14 MR. MC BRIDE: Objection.

15 A. Yes, I recognize it.

16 Q. You knew I'd be asking about this

17 one; yes, sir?

18 MR. MC BRIDE: Objection.

19 A. Yes.

20 Q. You're prepared to answer questions

21 about this one?

22 A. Yes.

23 Q. Good. Because you knew we found it

24 when you read Mr. Katz's rebuttal?

25 MR. MC BRIDE: Objection.

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2 Q. Correct?

3 A. I saw it, yes.

4 Q. Because you thought it was

5 confidential, but we found it, right, sir?

6 MR. MC BRIDE: Objection. Asked and

7 answered.

8 A. I was told it was confidential.

9 Q. Well, that wasn't true either now.

10 Page 14, sir. In page 14 of the undisclosed

11 Overton report, do you see a section that

12 refers to the due diligence that was performed

13 by Rose, AFP, Cerulean and Knickerbocker?

14 MR. MC BRIDE: Which page?

15 MR. SHAPIRO: Fourteen.

16 A. So which number did you say?

17 Q. Page 14, paragraph 47.

18 A. Yep.

19 Q. Do you see that?

20 A. Yep.

21 Q. That's where you provide some

22 opinions, including that Rose, AFP and Cerulean

23 performed all reasonable due diligence under

24 those circumstances, correct?

25 A. Correct.

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2 Q. Paragraph 50, were you of the

3 opinion that it was appropriate for AFP and

4 Knickerbocker to rely on representations and

5 warranties provided in that case by Sammons?

6 A. I was.

7 Q. Yes, sir?

8 A. I was.

9 Q. And they conducted UCC lien

10 searches, correct?

11 A. Correct.

12 Q. Were those reasonable due diligence

13 steps?

14 A. They were.

15 Q. Did Athena take those very

16 reasonable due diligence steps in this matter?

17 MR. MC BRIDE: Objection.

18 A. They did.

19 Q. Okay, good. Move down to paragraph

20 52. And also 53. And paragraphs 52 and 53, I

21 guess I should pick one of them. Fifty-two,

22 was part of your conclusion in the Overton

23 matter that Rose, AFP, Cerulean and

24 Knickerbocker, collectively, undertook all

25 reasonable due diligence based on your

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2 conclusion that Mr. Rose personally examined

3 each of the pieces?

4 MR. MC BRIDE: Objection.

5 A. I'm sorry, ask the question again.

6 Q. Sure. In paragraph 52, is one of

7 the reasonable due diligence steps that forms

8 the basis for your opinion in Overton that the

9 pieces were personally examined in person?

10 A. Yep.

11 Q. And that they're the -- I'll call

12 him the bad actor, Mr. Sammons, had control of

13 each work prior to its delivery to the

14 applicable art defendant, right?

15 A. Correct.

16 Q. Can we agree in this matter that

17 Athena personally examined each of the pieces?

18 A. Yes.

19 Q. Can we agree, sir, in this matter

20 that Inigo Philbrick had control of each work

21 prior to its delivery to Athena?

22 A. Yes, but I would like to add that

23 after the Sammons event a number of us in the

24 art world, including myself, began to

25 reconsider the significance or the risks to

<p style="text-align: right;">Page 350</p> <p>1 Plummer - Confidential</p> <p>2 someone having possession of the art. This</p> <p>3 caused a rethink in the industry.</p> <p>4 Q. So paragraph 52, it's still a</p> <p>5 reasonable diligence step, you're just saying</p> <p>6 it's not as much of a plus fact for the reasons</p> <p>7 you said before, right?</p> <p>8 A. Correct.</p> <p>9 Q. It's still something one should take</p> <p>10 into account?</p> <p>11 A. Yes, correct.</p> <p>12 Q. You're just saying how in the</p> <p>13 holistic world of credit underwriting people</p> <p>14 weigh that particular plus factor does change</p> <p>15 from time to time?</p> <p>16 A. Correct.</p> <p>17 Q. So then why don't you turn the page</p> <p>18 again, paragraph 55. In paragraph 55 was one</p> <p>19 of the reasonable due diligence steps that you</p> <p>20 found to be important that was undertaken by</p> <p>21 what you called in the Overton matter, the</p> <p>22 applicable art defendants was the fact that in</p> <p>23 this case AFP had done a search for the</p> <p>24 relevant work on the art loss register?</p> <p>25 MR. MC BRIDE: Objection.</p>	<p style="text-align: right;">Page 352</p> <p>1 Plummer - Confidential</p> <p>2 correct?</p> <p>3 MR. MC BRIDE: Objection.</p> <p>4 Q. Correct?</p> <p>5 A. That you're saying that Athena went</p> <p>6 above and beyond what AFP did in its due</p> <p>7 diligence?</p> <p>8 Q. Sure, because your counselor just</p> <p>9 pointed out AFP checked one work and Athena</p> <p>10 checks every work?</p> <p>11 A. In terms of checking with the art</p> <p>12 loss registry, yes.</p> <p>13 Q. Fair enough. Then the second point</p> <p>14 you made is the last sentence in paragraph 55</p> <p>15 which is that checking the art loss register</p> <p>16 wouldn't have mattered either way because</p> <p>17 checking the art loss register would not have</p> <p>18 revealed the fraud, correct?</p> <p>19 MR. MC BRIDE: Objection.</p> <p>20 A. I'm sorry, what number are you?</p> <p>21 Q. I'm at the last sentence of</p> <p>22 paragraph 55.</p> <p>23 A. Correct. Yes.</p> <p>24 Q. So your point was it was a</p> <p>25 reasonable due diligence step to check the art</p>
<p style="text-align: right;">Page 351</p> <p>1 Plummer - Confidential</p> <p>2 A. Right.</p> <p>3 Q. And, in fact, Athena did a search on</p> <p>4 the art loss register, correct?</p> <p>5 A. Right.</p> <p>6 MR. MC BRIDE: Objection. AFP did a</p> <p>7 search on one piece.</p> <p>8 Q. Absolutely and you considered that</p> <p>9 one search on that one piece was a reasonable</p> <p>10 due diligence step in the Federal Court report</p> <p>11 that you filed in Overton, yes?</p> <p>12 A. Exactly, but as I point out in this</p> <p>13 the kind of fraud that Sammons perpetrated and</p> <p>14 others perpetrated after this would not be</p> <p>15 evident on our loss register.</p> <p>16 Q. Fair enough. Let's take two points</p> <p>17 your counsel pointed out, that in Overton, AFP</p> <p>18 did a search other than just one work, right?</p> <p>19 A. Right.</p> <p>20 Q. Athena does a search on every work,</p> <p>21 correct?</p> <p>22 A. Right.</p> <p>23 Q. So in that respect, Athena went well</p> <p>24 beyond what was a reasonable due diligence in</p> <p>25 your expert opinion for AFP in Overton,</p>	<p style="text-align: right;">Page 353</p> <p>1 Plummer - Confidential</p> <p>2 loss register, true? Correct?</p> <p>3 A. Right, but that it would not have</p> <p>4 shown up the fraud that was at issue here.</p> <p>5 Q. Which is exactly what happened in</p> <p>6 Athena, correct?</p> <p>7 A. Which is what is consistent with</p> <p>8 everything I have been saying all along.</p> <p>9 Q. Which is that it's a reasonable due</p> <p>10 diligence step to check it, but if someone else</p> <p>11 with an interest chooses not to report it to</p> <p>12 the art register, it wouldn't be on the</p> <p>13 register?</p> <p>14 A. Correct.</p> <p>15 MR. MC BRIDE: Objection.</p> <p>16 A. Which is why I state from the start</p> <p>17 that AFP is an imperfect resource.</p> <p>18 Q. Well, you don't state that in</p> <p>19 Overton, sir?</p> <p>20 A. I did do state it in today's --</p> <p>21 MR. MC BRIDE: Objection.</p> <p>22 A. In the report for --</p> <p>23 Q. Right, right. So when your clients</p> <p>24 did it in Overton, it was a reasonable due</p> <p>25 diligence step; that's what you say in</p>

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<p style="text-align: right;">Page 354</p> <p>1 Plummer - Confidential</p> <p>2 paragraph 55, correct?</p> <p>3 MR. MC BRIDE: Objection.</p> <p>4 A. Well, I also point out the problem</p> <p>5 that it wouldn't show up.</p> <p>6 Q. But you don't say it was an</p> <p>7 unreasonable due diligence step; do you?</p> <p>8 MR. MC BRIDE: Objection.</p> <p>9 A. No, but I point out why it might not</p> <p>10 show up.</p> <p>11 Q. You point out why it might not show</p> <p>12 up, but when Athena did it, you said that it</p> <p>13 was -- it's basically worthless, right?</p> <p>14 A. I didn't say it's worthless. I said</p> <p>15 that it's of dubious value.</p> <p>16 Q. You didn't say it was basically</p> <p>17 worthless?</p> <p>18 A. I said a lot of our professionals, I</p> <p>19 got very specific -- I said a lot of our</p> <p>20 professionals find it of questionable value</p> <p>21 because it does not show these kinds of frauds</p> <p>22 that have become more prevalent over the last</p> <p>23 couple of years and I pointed to the individual</p> <p>24 frauds that have become more prevalent</p> <p>25 including this one.</p>	<p style="text-align: right;">Page 356</p> <p>1 Plummer - Confidential</p> <p>2 that "AFP did not receive purchase invoices</p> <p>3 from Sammons demonstrating his ownership of</p> <p>4 some work," correct?</p> <p>5 A. Yes.</p> <p>6 Q. And the fact that AFP did not</p> <p>7 receive purchase invoices from Sammons</p> <p>8 demonstrating his ownership of some of the work</p> <p>9 for purposes of Overton in your mind was fully</p> <p>10 consistent with due diligence, correct?</p> <p>11 MR. MC BRIDE: Objection.</p> <p>12 A. Yes.</p> <p>13 Q. But that's not the case with Athena,</p> <p>14 is it, sir?</p> <p>15 A. I think in the contents of the</p> <p>16 events of this and the subsequent frauds and</p> <p>17 the size of the transaction, I have</p> <p>18 reconsidered my position on this.</p> <p>19 Q. So paragraph 56 in your Federal</p> <p>20 Court opinion in Overton you now say is wrong?</p> <p>21 MR. MC BRIDE: Objection.</p> <p>22 Mischaracterizes testimony.</p> <p>23 A. I now say in the context of time and</p> <p>24 events in the art world, I would rethink how I</p> <p>25 would phrase this.</p>
<p style="text-align: right;">Page 355</p> <p>1 Plummer - Confidential</p> <p>2 Q. Sir, was it a reasonable due</p> <p>3 diligence step for AFP to do a search on the</p> <p>4 art loss register for at least one of the</p> <p>5 works?</p> <p>6 MR. MC BRIDE: Objection.</p> <p>7 A. Was it?</p> <p>8 Q. A reasonable due diligence step?</p> <p>9 A. For Athena?</p> <p>10 Q. For AFP to do it?</p> <p>11 A. Yes. I'm not disputing it was a</p> <p>12 reasonable one, but I'm pointing out the</p> <p>13 problems with it.</p> <p>14 Q. It's a reasonable imperfect due</p> <p>15 diligence step, right?</p> <p>16 A. Yes.</p> <p>17 Q. And when Athena did it, it was also</p> <p>18 a reasonable but imperfect step, true?</p> <p>19 A. Yes.</p> <p>20 Q. There is no difference. It's the</p> <p>21 same reasonable --</p> <p>22 A. I don't think I made a different</p> <p>23 point in Athena.</p> <p>24 Q. Okay. Fair enough. So then in</p> <p>25 paragraph 56 you say that it doesn't matter</p>	<p style="text-align: right;">Page 357</p> <p>1 Plummer - Confidential</p> <p>2 Q. Sir, you signed this opinion like</p> <p>3 basically within twelve months of the</p> <p>4 underwriting decision that was made by Athena</p> <p>5 that you are now criticizing, correct?</p> <p>6 MR. MC BRIDE: Objection.</p> <p>7 A. Yes, but it was seven years ago from</p> <p>8 today.</p> <p>9 Q. Sir, but you've been criticizing</p> <p>10 Athena's decision from 2017, correct?</p> <p>11 A. Okay.</p> <p>12 Q. So, Athena did more by way of</p> <p>13 purchase invoices than AFP, true?</p> <p>14 A. Yes, they had purchase invoices, but</p> <p>15 they didn't have proof of payment of those</p> <p>16 purchase invoices.</p> <p>17 Q. This says nothing about proof of</p> <p>18 payment. I'm talking about the purchase</p> <p>19 invoices in the first instance, right?</p> <p>20 A. But the criticism that I leveled</p> <p>21 against them was the lack of proof of payment.</p> <p>22 Q. Did they have proof of payment in</p> <p>23 Overton?</p> <p>24 A. I don't remember if I discussed that</p> <p>25 in here.</p>

<p style="text-align: right;">Page 358</p> <p>1 Plummer - Confidential</p> <p>2 Q. You didn't raise it at all. You</p> <p>3 didn't even get there, sir. It was irrelevant.</p> <p>4 MR. MC BRIDE: There is no question.</p> <p>5 There is no question.</p> <p>6 Q. Paragraph 56, stick with me, second</p> <p>7 sentence. Do you see where it says "That is</p> <p>8 not uncommon?"</p> <p>9 A. Yep.</p> <p>10 Q. Could you read the next two</p> <p>11 sentences into the record?</p> <p>12 A. "Sometimes there is no</p> <p>13 documentation --"</p> <p>14 Q. No start with the prior sentence,</p> <p>15 the one beginning with "That is not uncommon?"</p> <p>16 A. "That is not uncommon in the art</p> <p>17 world and would not have been a cause for</p> <p>18 distress. Sometimes there is no</p> <p>19 documentation -- the art world is still a</p> <p>20 marketplace where deals can be done on a</p> <p>21 handshake. In addition --"</p> <p>22 Q. Okay. Is that true still, that</p> <p>23 statement?</p> <p>24 A. Yes.</p> <p>25 Q. Read the last sentence of paragraph</p>	<p style="text-align: right;">Page 360</p> <p>1 Plummer - Confidential</p> <p>2 A. I am not sure it's an important one.</p> <p>3 I don't change my opinion on that.</p> <p>4 Q. Okay. Fine. Insurance is</p> <p>5 irrelevant in your mind?</p> <p>6 MR. MC BRIDE: Objection.</p> <p>7 A. I didn't say it's irrelevant. I</p> <p>8 think it's a given.</p> <p>9 Q. So in paragraph 57, okay, in your</p> <p>10 Overton expert report supporting your</p> <p>11 conclusion that the due diligence that was</p> <p>12 performed was reasonable, you said it was</p> <p>13 reasonable for, who you describe as the art</p> <p>14 defendants, to have accepted a bill of sale for</p> <p>15 artwork that had been e-mailed to them by</p> <p>16 Mr. Sammons, correct?</p> <p>17 A. Right. You're talking 57?</p> <p>18 Q. Paragraph 57, correct. And you said</p> <p>19 because Mr. Sammons' fraudulent activities had</p> <p>20 not come to light, there would be no reason for</p> <p>21 anyone to suspect that he would have been</p> <p>22 resorting, and I'm paraphrasing a bit,</p> <p>23 resorting to quote, "the creation of falsified</p> <p>24 documents," correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 359</p> <p>1 Plummer - Confidential</p> <p>2 56 and tell me if that is still your sincere</p> <p>3 opinion about the art world beginning with "In</p> <p>4 addition?"</p> <p>5 A. "In addition, if a reputable dealer</p> <p>6 is willing to represent and warrant that they</p> <p>7 have clear title to the work, the absence of a</p> <p>8 purchase invoice is not cause for suspicion."</p> <p>9 Q. That was your opinion in a Federal</p> <p>10 Court case roughly a year before Athena</p> <p>11 accepted the representations and warranties</p> <p>12 from Philbrick, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Keep going. Look at paragraph 60.</p> <p>15 Go to paragraph 60. In 60 you said that the</p> <p>16 lack of proof of insurance on behalf of your</p> <p>17 art defending clients was not concerning from a</p> <p>18 diligent standpoint, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Athena always had proof of</p> <p>21 insurance, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Could we agree that proof of</p> <p>24 insurance is at least something of an added</p> <p>25 plus factor in diligence?</p>	<p style="text-align: right;">Page 361</p> <p>1 Plummer - Confidential</p> <p>2 Q. Was there any document why that</p> <p>3 conclusion is any different for Athena?</p> <p>4 A. Yes.</p> <p>5 Q. And that's because of Inigo</p> <p>6 Philbrick's age?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. No, it is because Timothy Sammons</p> <p>9 had been active in the art world for 30 to 35</p> <p>10 years and that might be a function of age, but</p> <p>11 he had worked at Sotheby's in New York and had</p> <p>12 a senior level there.</p> <p>13 He had worked at Sotheby's London</p> <p>14 and had a very senior position there. He had</p> <p>15 gone off on his own after about 15 years at</p> <p>16 Sotheby's. So he was well known, well regarded</p> <p>17 and he had done many transactions and a lot of</p> <p>18 business with all the auction houses. So his</p> <p>19 history was far more robust and excessive than</p> <p>20 was Inigo's at only --</p> <p>21 Q. He was in his 50s or 60s?</p> <p>22 A. He was in his 50s.</p> <p>23 Q. So doesn't that just disprove the</p> <p>24 notion that younger people are, when it comes</p> <p>25 to credit underwriting, more likely to be a</p>



<p style="text-align: right;">Page 362</p> <p>1 Plummer - Confidential</p> <p>2 credit problem?</p> <p>3 MR. MC BRIDE: Objection.</p> <p>4 A. I think there -- there is a greater</p> <p>5 chance of them being a higher risk.</p> <p>6 Q. Well, but if the risk is that of</p> <p>7 fraud, this guy Sammons was a colossal fraud</p> <p>8 and he is roughly your and my age, right?</p> <p>9 A. Right.</p> <p>10 Q. So today, as an expert, do you think</p> <p>11 there is any correlation of a fraud risk</p> <p>12 between someone who is younger and very</p> <p>13 successful and someone who is older and very</p> <p>14 successful?</p> <p>15 A. I think that this came as a surprise</p> <p>16 to the art world and it made a lot of people</p> <p>17 rethink the risk of fraud out there and I think</p> <p>18 I refer in some version to that in my expert</p> <p>19 opinion that the relevance of this fraud has</p> <p>20 become a concern to those of us in the art</p> <p>21 world that we all need to do more due diligence</p> <p>22 and think differently about approaching these</p> <p>23 issues.</p> <p>24 Q. Is it reasonable, as a matter of</p> <p>25 asset-backed credit underwriting, to apply</p>	<p style="text-align: right;">Page 364</p> <p>1 Plummer - Confidential</p> <p>2 actually picked up the phone and called</p> <p>3 Phillips, true?</p> <p>4 A. Yes.</p> <p>5 Q. I understand that in your mind Ms.</p> <p>6 Sachs should have asked additional questions,</p> <p>7 but she did pick up the phone and call the</p> <p>8 seller, Phillips, correct?</p> <p>9 A. Yes.</p> <p>10 Q. In Overton you concluded that the</p> <p>11 art defendants exercised reasonable due</p> <p>12 diligence and they didn't even try to call the</p> <p>13 seller; did they?</p> <p>14 A. No, they did not try to call the</p> <p>15 seller.</p> <p>16 Q. In fact, you said it might have</p> <p>17 almost been improper or unseemingly to call the</p> <p>18 seller, correct?</p> <p>19 MR. MC BRIDE: Objection.</p> <p>20 A. Well, that was -- if I remember</p> <p>21 correctly, that was a different situation. I</p> <p>22 mean calling an auction house is not violating</p> <p>23 or puncturing the dealer confidentiality</p> <p>24 because the auction house is there. They are</p> <p>25 known and you're getting a general opinion,</p>
<p style="text-align: right;">Page 363</p> <p>1 Plummer - Confidential</p> <p>2 different underwriting standards to borrowers</p> <p>3 of different ages?</p> <p>4 A. No, and I'm not suggesting that.</p> <p>5 Q. In fact, sir, that may very well be</p> <p>6 offensive, correct?</p> <p>7 A. It may even be illegal.</p> <p>8 MR. MC BRIDE: Objection.</p> <p>9 Q. It may even be illegal, right?</p> <p>10 A. Yes.</p> <p>11 Q. Did Athena call the seller of the</p> <p>12 artwork?</p> <p>13 A. Did Athena call the seller of the</p> <p>14 Basquiat?</p> <p>15 Q. Of course.</p> <p>16 A. I don't believe so.</p> <p>17 Q. Athena called Phillips?</p> <p>18 A. Oh, you're talking about the</p> <p>19 Basquiat. I thought we were back at the --</p> <p>20 never mind.</p> <p>21 Q. We will start again. In this case,</p> <p>22 sir, there was no question that Athena had a</p> <p>23 bill of sale from Phillips?</p> <p>24 A. Right.</p> <p>25 Q. Which no dispute is authentic and</p>	<p style="text-align: right;">Page 365</p> <p>1 Plummer - Confidential</p> <p>2 without actually speaking specifically to the</p> <p>3 client who owns it, whereas in the case, I</p> <p>4 think you are referring to here, if I remember</p> <p>5 correctly, we are talking about talking to an</p> <p>6 individual and that would be a violation of</p> <p>7 confidentiality.</p> <p>8 Q. But the bottom line, sir, and I'm</p> <p>9 referring specifically, you know, to like</p> <p>10 picking up the phone and calling, right, Athena</p> <p>11 did have like the bill of sale or the purchase</p> <p>12 contract and did call the seller Phillips,</p> <p>13 right?</p> <p>14 A. Right.</p> <p>15 Q. The art defendants that you</p> <p>16 concluded exercised reasonable due diligence</p> <p>17 didn't even try to do that, correct?</p> <p>18 MR. MC BRIDE: Objection.</p> <p>19 A. No, for the reasons I stated.</p> <p>20 Q. Sir, putting aside their subjective</p> <p>21 motivation, okay, they didn't do it and yes,</p> <p>22 they still conducted reasonable diligence in</p> <p>23 your expert opinion?</p> <p>24 MR. MC BRIDE: Objection.</p> <p>25 A. It was also a loan that was a</p>

<p style="text-align: right;">Page 378</p> <p>1 Plummer - Confidential</p> <p>2 unredacted bank statements?</p> <p>3 MR. MC BRIDE: Objection.</p> <p>4 A. No, to go back to a couple of months</p> <p>5 of statements around the time that that was</p> <p>6 bought.</p> <p>7 Q. One more time say that.</p> <p>8 MR. MC BRIDE: Can we have it read</p> <p>9 back?</p> <p>10 Q. I actually would appreciate you said</p> <p>11 it again because it's not actually what you</p> <p>12 meant to say.</p> <p>13 Fine. Your answer is, sir, no, you</p> <p>14 only need to go back a couple of months of</p> <p>15 statements around the time it was bought?</p> <p>16 A. Yes.</p> <p>17 Q. Under your new underwriting standard</p> <p>18 for ABL loans, you are supposed to look 90 days</p> <p>19 before and after the acquisition of the</p> <p>20 painting that is pledged as collateral?</p> <p>21 MR. MC BRIDE: Objection.</p> <p>22 A. I wouldn't necessarily say it was 90</p> <p>23 days, but the period in which it could be</p> <p>24 proved that there was not money coming in from</p> <p>25 an agent or a buyer that he was acting as agent</p>	<p style="text-align: right;">Page 380</p> <p>1 Plummer - Confidential</p> <p>2 support your conclusion that the art defendants</p> <p>3 performed all reasonable due diligence under</p> <p>4 the circumstances because, again paragraph 69,</p> <p>5 Sammons signed standard representations and</p> <p>6 warranties which you describe over the next</p> <p>7 half dozen lines, correct?</p> <p>8 A. Hmm-hmm.</p> <p>9 Q. Yes, sir?</p> <p>10 A. Yes, yes.</p> <p>11 Q. It's the case, sir, that the Steve</p> <p>12 Brody prepared reps and warranties in the loan</p> <p>13 and security agreement were far more extensive</p> <p>14 than the ones that were set forth in paragraph</p> <p>15 69, correct?</p> <p>16 MR. MC BRIDE: Objection.</p> <p>17 A. I don't disagree with that.</p> <p>18 Q. So the reasonable reliance on</p> <p>19 representations and warranties, which you told</p> <p>20 the Federal Court was appropriate due diligence</p> <p>21 in Overton, certainly was the case for Athena</p> <p>22 which had way more and way better reps and</p> <p>23 warranties?</p> <p>24 A. I didn't dispute having reps and</p> <p>25 warranties. I said that Athena had an over</p>
<p style="text-align: right;">Page 379</p> <p>1 Plummer - Confidential</p> <p>2 for.</p> <p>3 Q. But why would that necessarily show</p> <p>4 anything in a world where a dealer is</p> <p>5 constantly adding and removing collateral?</p> <p>6 There are constant ins and outs; aren't there?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. There are, but usually there is</p> <p>9 evidence of who the money is coming from and</p> <p>10 what it is for, the wire transfers.</p> <p>11 Q. Do your bank statements always say</p> <p>12 that?</p> <p>13 A. Most of the bank statements I have</p> <p>14 seen in the art world have identifying issues</p> <p>15 like Basquiat and all of that.</p> <p>16 Q. Is that even legal in Europe, sir,</p> <p>17 to ask for that?</p> <p>18 A. I don't know the laws in Europe.</p> <p>19 I'm talking about here in the United States.</p> <p>20 Q. That's not where Philbrick was; was</p> <p>21 it?</p> <p>22 A. No, his bank account was in U.S.</p> <p>23 dollars. Was it at Santander? I don't know.</p> <p>24 I didn't hear that come up as an issue.</p> <p>25 Q. Paragraph 69. In paragraph 69 you</p>	<p style="text-align: right;">Page 381</p> <p>1 Plummer - Confidential</p> <p>2 reliance on reps and warranties that did not</p> <p>3 work for them in this instance.</p> <p>4 Q. Well, sir, it didn't work in the</p> <p>5 instance of Sammons because he lied also,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. They are in exactly the same</p> <p>9 position, but Athena got a lot more reps and</p> <p>10 warranties, correct?</p> <p>11 A. Correct.</p> <p>12 Q. It's also the case that Athena had</p> <p>13 repeated standalone assurances, all those</p> <p>14 e-mails in the criminal complaint from</p> <p>15 Philbrick as to his ownership free and clear of</p> <p>16 the painting, true?</p> <p>17 A. Yes.</p> <p>18 Q. In fact, the United States Attorney</p> <p>19 for the Southern District of New York based a</p> <p>20 criminal prosecution against Philbrick not just</p> <p>21 on the reps and warranties in the Steve Brody</p> <p>22 approved loan and security agreement, but the</p> <p>23 constant e-mail that Philbrick was saying</p> <p>24 repeating them, correct?</p> <p>25 MR. MC BRIDE: Objection. No legal</p>

<p style="text-align: right;">Page 382</p> <p>1 Plummer - Confidential</p> <p>2 expertise.</p> <p>3 Q. Yes, sir?</p> <p>4 A. I don't feel I have the authority to</p> <p>5 speak on that.</p> <p>6 Q. Sir, it's a document you said you</p> <p>7 relied on in your report. You've seen the</p> <p>8 criminal complaint, right?</p> <p>9 A. Yes.</p> <p>10 Q. And the US Attorney in the criminal</p> <p>11 complaint not only refers to Athena's reliance</p> <p>12 on the frankly redundant Steve Brody's reps and</p> <p>13 warranties in the loan and security agreement,</p> <p>14 but separately, that repeatedly -- Inigo</p> <p>15 Philbrick repeated them?</p> <p>16 A. I have never taken an issue with the</p> <p>17 reps and warranties in the Athena documents.</p> <p>18 Q. And Athena was entitled to rely on</p> <p>19 them as reasonable due diligence just like your</p> <p>20 clients in Overton were entitled to rely on the</p> <p>21 reps and warranties, true?</p> <p>22 A. Yes, they were.</p> <p>23 Q. Paragraph -- in fact, earlier you</p> <p>24 identified Sotheby's as being in your mind</p> <p>25 something of a blue-chip asset-backed lender,</p>	<p style="text-align: right;">Page 384</p> <p>1 Plummer - Confidential</p> <p>2 A. That's a reasonable statement.</p> <p>3 Q. Fair enough. Page 20 of 27. It's</p> <p>4 the end of paragraph 70.</p> <p>5 A. Yep.</p> <p>6 Q. Where you tell the Federal Court in</p> <p>7 your Overton report that asset-backed lenders</p> <p>8 such as Sotheby's and Knickerbocker are</p> <p>9 tremendously reliant on such representations</p> <p>10 and warranties, correct?</p> <p>11 A. Yes.</p> <p>12 Q. That was true when you signed your</p> <p>13 Federal Court report in Overton, right?</p> <p>14 A. Right.</p> <p>15 Q. And that's still true today?</p> <p>16 A. As I said a few minutes ago, I have</p> <p>17 not taken an issue with the reps and</p> <p>18 warranties. I just said there are other things</p> <p>19 I needed to rely upon where these weren't</p> <p>20 sufficient.</p> <p>21 Q. Is there anything that any of the</p> <p>22 art defendants, if you will, and in the Overton</p> <p>23 case, did by way of diligence that Athena did</p> <p>24 not do?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 383</p> <p>1 Plummer - Confidential</p> <p>2 correct?</p> <p>3 A. I don't think I ever used that</p> <p>4 phrase.</p> <p>5 MR. MC BRIDE: Objection.</p> <p>6 Q. I might have used it and you might</p> <p>7 have agreed. Rather than put words in your</p> <p>8 mouth, do you consider Sotheby's to be a high</p> <p>9 quality, careful asset-backed lender?</p> <p>10 A. I think it depends on who is running</p> <p>11 it at the time and some times are better than</p> <p>12 others, but I do think they have been the most</p> <p>13 successful.</p> <p>14 Q. And certainly you believe that</p> <p>15 Knickerbocker exercised at least reasonable due</p> <p>16 diligence in its financial affairs because you</p> <p>17 told the Federal Court that, correct?</p> <p>18 A. Yes.</p> <p>19 MR. MC BRIDE: Objection.</p> <p>20 A. I wouldn't make a comparison between</p> <p>21 Knickerbocker and Sotheby's.</p> <p>22 Q. Correct. Fair enough.</p> <p>23 Knickerbocker discharged its industry duty and</p> <p>24 Sotheby's might be well better than that; fair</p> <p>25 enough?</p>	<p style="text-align: right;">Page 385</p> <p>1 Plummer - Confidential</p> <p>2 MR. MC BRIDE: Objection.</p> <p>3 Q. Paragraph 76. In paragraph 76 do</p> <p>4 you conclude that, "The conditions of the</p> <p>5 Asset-backed Loans issued by Knickerbocker were</p> <p>6 consistent with the practices of others in the</p> <p>7 sector of the art lending industry," correct?</p> <p>8 A. At that point in time.</p> <p>9 Q. How were the conditions of the</p> <p>10 Athena asset-backed loans any different than</p> <p>11 those of Knickerbocker?</p> <p>12 A. It was a different moment in time</p> <p>13 and I think that Athena held out a type of due</p> <p>14 diligence that was in excess of this and I</p> <p>15 don't think they exercised even the due</p> <p>16 diligence that they said they did.</p> <p>17 Q. Okay, sir. I guess the question is</p> <p>18 whether the practice of others in the sector of</p> <p>19 the art lending industry and remember earlier I</p> <p>20 asked you if you could identify whether the</p> <p>21 underwriting practices of Athena -- withdrawn.</p> <p>22 Remember the question that I asked,</p> <p>23 if you could identify anybody who had stronger</p> <p>24 or more robust asset-backed underwriting</p> <p>25 lending authority than Athena and you couldn't</p>

<p style="text-align: right;">Page 386</p> <p>1 Plummer - Confidential</p> <p>2 identify anyone, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Focus now on just the conditions of</p> <p>5 the asset-backed loans which is the subject of</p> <p>6 paragraph 76.</p> <p>7 Is there anything missing by way of</p> <p>8 the terms and conditions of the Athena</p> <p>9 asset-backed loans that makes them fall short</p> <p>10 of what you consider to be quote, "the</p> <p>11 practices of others in this sector of the art</p> <p>12 lending industry?"</p> <p>13 MR. MC BRIDE: Objection.</p> <p>14 A. Proof of payment.</p> <p>15 Q. And that's because you don't</p> <p>16 consider -- you don't consider the documents</p> <p>17 that Athena received to be proof of payment</p> <p>18 which included number one, a contract, number</p> <p>19 two, a seller saying they received payment,</p> <p>20 number three, a buyer saying they made payment,</p> <p>21 right, and number four, possession and number</p> <p>22 five, a borrower albeit fraudulently supplying</p> <p>23 documentation which on its face really did show</p> <p>24 the payments if believed?</p> <p>25 MR. MC BRIDE: Objection.</p>	<p style="text-align: right;">Page 388</p> <p>1 Plummer - Confidential</p> <p>2 A. Right.</p> <p>3 Q. Is Plummer Exhibit 7 an affidavit</p> <p>4 that you swore out in the Supreme Court of the</p> <p>5 State of New York?</p> <p>6 MR. MC BRIDE: Read the whole thing,</p> <p>7 a couple of the pages, not word for word,</p> <p>8 but look at each page.</p> <p>9 A. (Witness reviewing document).</p> <p>10 Q. Are you familiar with that, sir?</p> <p>11 A. I'm familiar with it. I'm just</p> <p>12 making sure what is in it. I haven't seen it</p> <p>13 for quite a few years.</p> <p>14 Q. Pardon me, can we go off the record?</p> <p>15 THE VIDEOGRAPHER: We are going off</p> <p>16 the record. The time is 6:30 p.m.</p> <p>17 (Brief recess taken.)</p> <p>18 THE VIDEOGRAPHER: We are going on</p> <p>19 the record. The time is 6:33.</p> <p>20 BY MR. SHAPIRO:</p> <p>21 Q. I just need to apologize to</p> <p>22 Mr. Plummer and counsel for having just jumped</p> <p>23 out of here. We are back on the record.</p> <p>24 Directing your attention to Plummer</p> <p>25 Exhibit 7. This is the affidavit, Mr. Plummer,</p>
<p style="text-align: right;">Page 387</p> <p>1 Plummer - Confidential</p> <p>2 A. I'm sorry, what is the question at</p> <p>3 the heart of that?</p> <p>4 Q. That's the proof of payment that</p> <p>5 Athena received, correct; all of that?</p> <p>6 MR. MC BRIDE: Objection.</p> <p>7 A. They did not receive proof of</p> <p>8 payment either for the document that was part</p> <p>9 of the guarantee at Phillips nor did they</p> <p>10 receive payment -- proof of payment for the</p> <p>11 Basquiat and I would like to take a bathroom</p> <p>12 break. I will be fast.</p> <p>13 Q. That's fine. Take a break. You</p> <p>14 don't have to be fast.</p> <p>15 THE VIDEOGRAPHER: We are going off</p> <p>16 the record. The time is 6:07.</p> <p>17 (Brief recess taken.)</p> <p>18 THE VIDEOGRAPHER: We are going on</p> <p>19 the record. The time is 6:28.</p> <p>20 (Whereupon document was marked</p> <p>21 Exhibit 7 for identification as of this</p> <p>22 date.)</p> <p>23 BY MR. SHAPIRO:</p> <p>24 Q. Mr. Plummer, the court reporter has</p> <p>25 just handed you Exhibit 7.</p>	<p style="text-align: right;">Page 389</p> <p>1 Plummer - Confidential</p> <p>2 that you signed and swore on April 24, 2018?</p> <p>3 A. Yep.</p> <p>4 Q. And this is in connection with the</p> <p>5 dispute between your business Artvest Partners</p> <p>6 and TEFAF?</p> <p>7 A. Right.</p> <p>8 Q. TEFAF I'm shorthand the name of</p> <p>9 the opposing litigant I think in a way that</p> <p>10 doesn't offend any of the parts.</p> <p>11 All right, sir, is it fair to say</p> <p>12 that there came a time where the predominant --</p> <p>13 pardon me, directing your attention to</p> <p>14 paragraph 24, that you and Mr. Rabin were</p> <p>15 spending almost all of your time managing the</p> <p>16 two annual art fairs on behalf of TEFAF?</p> <p>17 A. Correct.</p> <p>18 Q. And it says so in paragraph 24?</p> <p>19 A. Correct.</p> <p>20 Q. That includes the very short art</p> <p>21 fair activities that were the subject of</p> <p>22 Athena's sponsorship?</p> <p>23 A. Right.</p> <p>24 Q. And you were not the only, but for</p> <p>25 some extended period of time, the most senior</p>

<p style="text-align: right;">Page 390</p> <p>1 Plummer - Confidential</p> <p>2 direct contact between Artvest and TEFAF on the</p> <p>3 one hand and Athena on the other?</p> <p>4 A. Correct, with -- I was with a number</p> <p>5 of the sponsors.</p> <p>6 Q. Fair enough, but you were the senior</p> <p>7 guy?</p> <p>8 A. Yeah.</p> <p>9 Q. Okay. And that's the relationship</p> <p>10 that wasn't renewed and resulted in the</p> <p>11 acrimony that was the subject of the earlier</p> <p>12 testimony, correct?</p> <p>13 MR. MC BRIDE: Objection.</p> <p>14 A. Which was the relationship that</p> <p>15 wasn't renewed?</p> <p>16 Q. The relationship that wasn't renewed</p> <p>17 between TEFAF and in the first instance,</p> <p>18 Athena, correct?</p> <p>19 A. Oh, no, that was not the source of</p> <p>20 the dispute between -- Athena was not the</p> <p>21 source of the dispute between TEFAF.</p> <p>22 Q. There were two disputes, right? One</p> <p>23 was the dispute between Athena Art Finance,</p> <p>24 which was dissatisfied with its relationship</p> <p>25 with TEFAF, correct?</p>	<p style="text-align: right;">Page 392</p> <p>1 Plummer - Confidential</p> <p>2 A. No.</p> <p>3 Q. About like constant relocations of</p> <p>4 Athena's space at the fair?</p> <p>5 A. I don't remember that.</p> <p>6 Q. You don't remember a discussion</p> <p>7 about the floral arrangements?</p> <p>8 A. No, I don't remember that either.</p> <p>9 MR. MC BRIDE: Objection.</p> <p>10 Q. Regardless, okay, you have already</p> <p>11 testified about the fact that the relationship</p> <p>12 between Athena and TEFAF, right, of which I</p> <p>13 mean your name is on the slide decks and you</p> <p>14 were involved, that broke down, right?</p> <p>15 MR. MC BRIDE: Objection.</p> <p>16 A. It had broken down before I was</p> <p>17 involved.</p> <p>18 Q. Correct, but the breakdown I'm</p> <p>19 referring to was that dispute which you -- I</p> <p>20 have already asked you about in which voices</p> <p>21 were raised and Mr. Danese asked you to leave</p> <p>22 the Athena offices?</p> <p>23 A. That's not the entire picture. What</p> <p>24 happened was we came to an agreement, I and</p> <p>25 Naomi Bigell came to an agreement. They were</p>
<p style="text-align: right;">Page 391</p> <p>1 Plummer - Confidential</p> <p>2 A. TEFAF general.</p> <p>3 Q. Correct, but the TEFAF relationship</p> <p>4 was managed by you and Artvest?</p> <p>5 A. Not initially. Actually I was</p> <p>6 brought in to help because it had taken a dark</p> <p>7 turn with Patrick van Maris and he was unhappy.</p> <p>8 So I was brought in to fix a problem that had</p> <p>9 already existed.</p> <p>10 Q. You were unable to fix that problem?</p> <p>11 A. I was unable to fix that problem to</p> <p>12 Danese's satisfaction.</p> <p>13 Q. You remember long meetings that</p> <p>14 discussed things like the color of coffee cups,</p> <p>15 correct?</p> <p>16 A. Vaguely. I won't remember all the</p> <p>17 details.</p> <p>18 Q. The fact that Athena ordered 50 VIP</p> <p>19 passes, only got 30, and you could only find</p> <p>20 another 10 and things like that?</p> <p>21 A. There were other people involved who</p> <p>22 dealt with some of that detail, not me.</p> <p>23 Q. You dealt with finding new space at</p> <p>24 the Empire Room, correct? You don't remember</p> <p>25 that issue?</p>	<p style="text-align: right;">Page 393</p> <p>1 Plummer - Confidential</p> <p>2 going to pay less money, but we were going to</p> <p>3 give them more for paying less money and she</p> <p>4 and I came to an agreement sometime in August</p> <p>5 and we had agreed we would -- because it was</p> <p>6 the end of summer, come to -- we would</p> <p>7 memorialize the agreement by September when</p> <p>8 business picked up again.</p> <p>9 Q. And you missed the deadline for</p> <p>10 that?</p> <p>11 A. No, I didn't miss the deadline for</p> <p>12 that.</p> <p>13 Q. You don't think there is e-mail</p> <p>14 after e-mail of you missing that deadline?</p> <p>15 A. I know they maintained I missed that</p> <p>16 deadline, but I did not miss that deadline.</p> <p>17 They use that as an excuse to trump other</p> <p>18 things.</p> <p>19 The real reason of what was going on</p> <p>20 is that we had a relationship with Bank of</p> <p>21 America and Bank of America was paying multiple</p> <p>22 times what Athena was paying and they were</p> <p>23 asking for less. And then Athena started</p> <p>24 asking for things that trampled on what we</p> <p>25 could give Bank of America and that's when the</p>



<p style="text-align: right;">Page 394</p> <p>1 Plummer - Confidential</p> <p>2 issue became problematic and we went over to</p> <p>3 Andrea's office to discuss it and that's when</p> <p>4 he had rationally -- and that's when he had an</p> <p>5 emotional reaction.</p> <p>6 Q. You hate Andrea; don't you?</p> <p>7 MR. MC BRIDE: Objection.</p> <p>8 A. No.</p> <p>9 Q. Do you know how he feels about you?</p> <p>10 MR. MC BRIDE: Objection.</p> <p>11 A. I don't care because I don't</p> <p>12 interact with him.</p> <p>13 Q. Well, sir, he told you what he</p> <p>14 thought of you.</p> <p>15 A. You know, but I don't remember what</p> <p>16 he said.</p> <p>17 Q. Sir, is it your testimony under oath</p> <p>18 that you don't remember raised voices in the</p> <p>19 Athena office in which you accused Naomi of</p> <p>20 something, you deeply upset that woman?</p> <p>21 A. No, I don't remember that.</p> <p>22 Q. You don't remember any of this?</p> <p>23 MR. MC BRIDE: Objection.</p> <p>24 A. I remember raised voices with</p> <p>25 Andrea, but I don't remember any raised voices</p>	<p style="text-align: right;">Page 396</p> <p>1 Plummer - Confidential</p> <p>2 A. I honestly don't remember.</p> <p>3 Q. Going back to your affidavit, sir,</p> <p>4 this affidavit, Exhibit 7, is about your</p> <p>5 Artvest dispute with Pay Back, correct?</p> <p>6 A. Correct.</p> <p>7 Q. When you were meeting with the</p> <p>8 Athena, you never once disclosed to Athena that</p> <p>9 TEFAF was already seeking to essentially remove</p> <p>10 you and Artvest?</p> <p>11 A. What is the timing of this?</p> <p>12 Q. I don't know. I can only go with</p> <p>13 what you told the court, but if you look to</p> <p>14 paragraph 34, it started in September of 2017.</p> <p>15 A. The dates --</p> <p>16 Q. And then if you look at paragraph</p> <p>17 35, by December you were being disinvited to</p> <p>18 meetings.</p> <p>19 MR. MC BRIDE: Wait for a question.</p> <p>20 Q. Right?</p> <p>21 A. By what date did you say?</p> <p>22 Q. By early, mid December, you were</p> <p>23 actually disinvited?</p> <p>24 A. Of what year?</p> <p>25 Q. 2017.</p>
<p style="text-align: right;">Page 395</p> <p>1 Plummer - Confidential</p> <p>2 with Naomi nor do I remember accusing her of</p> <p>3 anything.</p> <p>4 Q. You never accused her of being rude</p> <p>5 to you at a time when you were sick?</p> <p>6 A. I mean that's something -- that</p> <p>7 might have happened in some daily course of</p> <p>8 action, but I don't remember it being something</p> <p>9 outside the norm of daily business.</p> <p>10 Q. Is it not outside the norm of daily</p> <p>11 business, as you put it, to be literally asked</p> <p>12 to leave a financial services company office</p> <p>13 for misbehavior?</p> <p>14 MR. MC BRIDE: Objection.</p> <p>15 A. We didn't misbehave.</p> <p>16 Q. So that was Mr. Danese acting</p> <p>17 inappropriately; is that your testimony?</p> <p>18 MR. MC BRIDE: Objection.</p> <p>19 A. I would argue that he had an extreme</p> <p>20 reaction emotionally when we were trying to</p> <p>21 have a very logical discussion with him about</p> <p>22 what was possible and what wasn't.</p> <p>23 Q. And you tried to placate him by</p> <p>24 sending him apology notes; didn't you?</p> <p>25 MR. MC BRIDE: Objection.</p>	<p style="text-align: right;">Page 397</p> <p>1 Plummer - Confidential</p> <p>2 A. I believe the dispute that you are</p> <p>3 referring to and characterizing with Andrea</p> <p>4 happened in August, September of 2017.</p> <p>5 Q. Correct and then by December of</p> <p>6 2017, you were actually being, you know, either</p> <p>7 removed or disinvited from meetings by TEFAF?</p> <p>8 MR. MC BRIDE: Objection.</p> <p>9 Mischaracterizes paragraph 35.</p> <p>10 A. I'm not sure how this is relevant to</p> <p>11 the Athena discussions because these internal</p> <p>12 matters wouldn't have been something that would</p> <p>13 have been any Andrea's business to know about.</p> <p>14 Q. So you don't think that someone was</p> <p>15 soliciting a literally \$400,000 payment from</p> <p>16 Athena based on your involvement about TEFAF,</p> <p>17 that you didn't need to disclose the fact that</p> <p>18 you were being disinvited to board meetings by</p> <p>19 TEFAF?</p> <p>20 MR. MC BRIDE: Objection.</p> <p>21 A. There are a number of things wrong</p> <p>22 with that question. The first is the \$400,000</p> <p>23 Athena never paid, was never planning to pay,</p> <p>24 was never billed for, was never in the realm of</p> <p>25 \$400,000 in their sponsorship role.</p>

<p style="text-align: right;">Page 398</p> <p>1 Plummer - Confidential</p> <p>2 Q. Under oath, sir, are you saying you</p> <p>3 didn't ask Athena for \$400,000 for a two year</p> <p>4 contract?</p> <p>5 A. That may have been discussed at some</p> <p>6 early stage, but by the time of 2017, we were</p> <p>7 talking something in the range of \$60,000.</p> <p>8 Q. Well, we will see what the documents</p> <p>9 say because it was 400?</p> <p>10 MR. MC BRIDE: No question.</p> <p>11 Q. And then after your relationship</p> <p>12 with Athena broke down to the point that you</p> <p>13 were asked to leave the Athena building, your</p> <p>14 relationship with TEFAF devolved such that your</p> <p>15 partner at Artvest, Mr. Rabin, was physically</p> <p>16 restrained by TEFAF, right? Paragraph 38.</p> <p>17 A. Yes, that was at a -- we went to the</p> <p>18 exhibitor meeting, which we normally went to,</p> <p>19 and Nanne Dekking, the chairman, asked us to</p> <p>20 leave and we had consulted with counsel whether</p> <p>21 or not we had right to be there and did, yes.</p> <p>22 Q. And it became physical?</p> <p>23 A. No, Jeff wasn't physical. TEFAF was</p> <p>24 physical.</p> <p>25 Q. I understand you told the court and</p>	<p style="text-align: right;">Page 400</p> <p>1 Plummer - Confidential</p> <p>2 two.</p> <p>3 Q. Sir, you have filed an expert report</p> <p>4 in which you spend a lot of time talking about</p> <p>5 all this TEFAF, right?</p> <p>6 A. I don't understand the relevance</p> <p>7 between our relationship with TEFAF and my</p> <p>8 relationship with Andrea. They have nothing do</p> <p>9 with each other.</p> <p>10 Q. Well, sir, respectfully, you don't</p> <p>11 decide that and I don't decide that. That's</p> <p>12 why we have judges and juries, sir, but you</p> <p>13 have an expert report which relies heavily on</p> <p>14 your experience running the art fair trade show</p> <p>15 that is TEFAF and you don't disclose that that</p> <p>16 ended so badly there was a lawsuit and a</p> <p>17 physical altercation and you file an expert</p> <p>18 report criticizing Athena without disclosing</p> <p>19 what was for Athena a significant economic</p> <p>20 relationship that ended in beyond a business</p> <p>21 disagreement that led you to be expelled from</p> <p>22 Athena. That's the point, sir, and none of</p> <p>23 that is disclosed in your report, right?</p> <p>24 MR. MC BRIDE: Objection.</p> <p>25 A. Because I do not interpret the</p>
<p style="text-align: right;">Page 399</p> <p>1 Plummer - Confidential</p> <p>2 asked the court to enjoin certain conduct on</p> <p>3 the basis of a sworn declaration that you were</p> <p>4 disinvited from meetings, that you were asked</p> <p>5 to leave the room and at one point the</p> <p>6 relationship that you had with TEFAF got so bad</p> <p>7 that there was something of a physical incident</p> <p>8 which, according to your sworn testimony, was</p> <p>9 witnessed by dozens of exhibitors and clients?</p> <p>10 A. Yeah, and we can go back to those</p> <p>11 exhibitors and tell you what really happened.</p> <p>12 Q. Fair enough. So the point being,</p> <p>13 taking you at your word as I do, the</p> <p>14 relationship with Athena over the TEFAF art</p> <p>15 fair degenerated to the point where you were</p> <p>16 asked to leave the Athena office.</p> <p>17 Then within a couple of months,</p> <p>18 according to your own declaration, your</p> <p>19 relationship with TEFAF disintegrated to the</p> <p>20 point where you were disinvited from meetings,</p> <p>21 excluded from conversations and then eventually</p> <p>22 there was an effort by TEFAF to physically</p> <p>23 remove you from an event, correct?</p> <p>24 MR. MC BRIDE: Objection.</p> <p>25 A. I don't see the relevance of the</p>	<p style="text-align: right;">Page 401</p> <p>1 Plummer - Confidential</p> <p>2 situation the way you do nor do I have the</p> <p>3 facts that you are purporting because they are</p> <p>4 not true. I did not think it made sense to put</p> <p>5 such a thing in my expert witness report.</p> <p>6 Q. Sir, isn't it the case that when you</p> <p>7 don't disclose information in an expert report,</p> <p>8 you deprive the reader of the expert report of</p> <p>9 the ability to make that judgment for</p> <p>10 themselves?</p> <p>11 MR. MC BRIDE: Objection. No legal</p> <p>12 expertise.</p> <p>13 A. I don't have the legal background to</p> <p>14 answer that.</p> <p>15 Q. Sir, just like you didn't disclose</p> <p>16 the 2016 expert report that actually was the</p> <p>17 basis for the one that you prepared here, that</p> <p>18 was your starting point, you didn't disclose</p> <p>19 that either; did you, sir?</p> <p>20 MR. MC BRIDE: Objection.</p> <p>21 A. I gave my -- I explained my reasons</p> <p>22 for that already.</p> <p>23 Q. Right. It was based on a</p> <p>24 conversation with a gentleman, the name of whom</p> <p>25 you didn't know, who told you a demonstrably</p>

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ATHENA ART FINANCE CORP.,

Plaintiff,

No. 20-cv-04669 (GBD) (VF)

-against-

that

CERTAIN ARTWORK BY JEAN-MICHEL BASQUIAT  
ENTITLED HUMIDITY, 1982, *In Rem*,

Defendant,

SATFINANCE INVESTMENT LIMITED and  
DELAHUNTY LIMITED d/b/a DELAHUNTY FINE ART,

Interested Parties.

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**ERRATA SHEET FOR APRIL 4, 2023, DEPOSITION OF MICHAEL PLUMMER**

I, MICHAEL PLUMMER, wish to make the following changes, for the following reasons:

PAGE	LINE	CHANGE:	REASON:
25	11	CHANGE: "CFO" to "COO"	REASON: Misspoke, corrected later in Deposition
40	3	CHANGE: Insert "than" between "regulated" and "here"	REASON: Transcription error
46	6	CHANGE: "evaluation" to "valuation"	REASON: Transcription error
48	24	CHANGE: Insert "and conduct" between "analyze" and "their"	REASON: Transcription error or misspoke
52	18	CHANGE: Insert "values" between "changing" and "and"	REASON: Transcription error
56	19	CHANGE: "full" to "Old"	REASON: Transcription error
61	17	CHANGE: "of" to "their"	REASON: Transcription error

61	18	CHANGE:	Insert “this” between “to” and “loan”
		REASON:	Transcription error
65	12	CHANGE:	Replace “source” with “cost”
		REASON:	Transcription error
74	13	CHANGE:	Insert “not” between “would” and “always”
		REASON:	Transcription error
81	7	CHANGE:	Delete “the” between “in” and “accessing”
		REASON:	Transcription error
114	11	CHANGE:	Replace “force” with “source”
		REASON:	Transcription error
131	6	CHANGE:	Delete “work”
		REASON:	Transcription error
131	8	CHANGE:	“Chairman” to “CEO”
		REASON:	Transcription error or misspoke
131	9	CHANGE:	“CFO” to “COO of Christie’s Financial Services”
		REASON:	Misspoke
139	21	CHANGE:	Replace “- -“ with “us and”
		REASON:	Transcription error
143	15	CHANGE:	Delete “when”
		REASON:	Transcription error
143	16	CHANGE:	Replace “pair” with “pare”
		REASON:	Transcription error
154	7	CHANGE:	Replace “is” with “as”
		REASON:	Transcription error
154	8	CHANGE:	Insert “asset in” after “the”
		REASON:	Transcription error
159	19	CHANGE:	Replace “to say” with “been saying”
		REASON:	Transcription error
159	20	CHANGE:	Replace “or” with “of”
		REASON:	Transcription error

173	6	CHANGE:	Replace “Deloitte” with “Detroit”
		REASON:	Transcription error
217	4	CHANGE:	Delete “high”
		REASON:	Transcription error
219	15	CHANGE:	Replace “would long to” with “prefer not to”
		REASON:	Transcription error
230	5	CHANGE:	Replace “import and” with “important”
		REASON:	Transcription error
246	16	CHANGE:	Insert “rate” between “loan” and “covers”
		REASON:	Transcription error
246	17	CHANGE:	Delete after the word “risk”
		REASON:	Transcription error or misspoke
246	18	CHANGE:	Delete the first “risk”
		REASON:	Transcription error or misspoke
253	3	CHANGE:	Delete “of a”
		REASON:	Transcription error
254	9	CHANGE:	“they” to “there”
		REASON:	Transcription error
266	5	CHANGE:	“a million .2” to “1.2 million”
		REASON:	Clarity
273	20	CHANGE:	Insert “not” before “a private backer”
		REASON:	Transcription error
275	15	CHANGE:	“the” to “their”
		REASON:	Transcription error
275	16	CHANGE:	Delete “Christie’s” before “Ed Dolman” & add
			“when at Christie’s” after “Ed Dolman”
		REASON:	Transcription error or misspoke
275	24	CHANGE:	Insert “someone else as” between “of” and “an”
		REASON:	Transcription error or misspoke
285	12	CHANGE:	Replace “seller” with “SIL”
		REASON:	Transcription error



288	9	CHANGE:	“Inigo” to “Aleksander”
		REASON:	Transcription error or misspoke
288	22	CHANGE:	“Under” to “Until”
		REASON:	Transcription error
354	18, 19	CHANGE:	Replace “our” with “art”
		REASON:	Transcription error
356	15	CHANGE:	Replace “contents” with “context”
		REASON:	Transcription error
373	6	CHANGE:	Delete “in 2007”
		REASON:	Transcription error or misspoke
373	19	CHANGE:	“negatively” to “negative”
		REASON:	Transcription error
376	14	CHANGE:	Delete “fund”
		REASON:	Transcription error
394	4	CHANGE:	Replace “rationally” with “behaved irrationally”
		REASON:	Transcription error
396	5	CHANGE:	Replace “Pay Back” with “TEFAF”
		REASON:	Transcription error



WITNESS SIGNATURE

May 11, 2023

DATE